



STATE OF TENNESSEE
RFS # 317.03-162-07
AMENDMENT # 1

February 6, 2007

THE SUBJECT RFP IS HEREBY AMENDED AS FOLLOWS.

A. The following RFP Schedule of Events updates or confirms scheduled RFP dates.

EVENT	TIME	DATE (all dates are state business days)	UPDATED / CONFIRMED
1. State Issues CN		January 12, 2007	CONFIRMED
2. Disability Accommodation Request Deadline		January 19, 2007	CONFIRMED
3. Mandatory Pre-proposal Conference	1:30 p.m. CST	January 22, 2007	CONFIRMED
4. Written Comments Deadline		January 29, 2007	CONFIRMED
5. State Responds to Written Comments		February 6, 2007	UPDATED
6. Initial Draft Contract Deadline	2:00 p.m.	February 13, 2007	UPDATED
7. Contract Negotiation Deadline	2:00 p.m.	March 13, 2007	CONFIRMED
8. Proposal Deadline	2:00 p.m.	March 20, 2007	CONFIRMED
9. State Completes Technical Proposal Evaluations		March 28, 2007	CONFIRMED
10. State Opens Cost Proposals and Calculates Scores	9:00 a.m.	March 30, 2007	CONFIRMED
11. State Issues Evaluation Notice <u>and</u> Opens CN Files for Public Inspection	9:00 a.m.	April 2, 2007	CONFIRMED
12. Contract Signing		April 13, 2007	CONFIRMED
13. Contract Signature Deadline		April 20, 2007	CONFIRMED
14. Contract Start Date		May 1, 2007	CONFIRMED

B. The following State responses to the questions detailed shall amend or clarify this RFP accordingly.

Item #	Question/Comment	State/Response
	<p>Note: in the questions that follow, any vendor's restatement of the text of the CN is for reference purposes only and shall not be construed to change the original CN wording.</p>	
1.	<p>Page 12, Section 4.7 Right to Refuse Personnel</p> <p>At its sole discretion, the State reserves the right to refuse any personnel, of the prime contractor or a subcontractor, for use in the performance of a contract pursuant to this CN. The State's approval of personnel will not be unreasonably withheld and will be expedited as necessary to avoid delays if the State declares a Disaster.</p> <p>This appears only in the subcontracting section of the PRO FORMA, please clarify.</p>	<p>The referenced sections refer to two distinct activities on the part of the State. RFP Section 4.7 specifies the State's right to refuse any Contractor personnel. By contrast, <i>pro forma</i> Contract Section D.5 addresses the State's right to prior approval of Contract assignment and subcontracts entered into by the Contractor. In other words, Section 4.7 pertains to <u>individuals</u> assigned by the Contractor to perform Disaster Recovery services, and Contract Section D.5 pertains to the <u>Contract and subcontracts</u>.</p> <p>RFP Section 4.7 is included in the Contract by reference (see pro forma Contract Section E.7). So the State has these rights, as well as the rights stated in Contract Section D.5.</p>
2.	<p>Page 15, Section 5.2.1, third paragraph, third bullet:</p> <p>The State reserves the right to modify such agreement(s) before acceptance, if the State deems this necessary to meet state legal or business requirements.</p> <p>Does the state reserve the right to unilaterally impose changes or did you intend for this to mean that you reserve the right to negotiate changes, please clarify.</p>	<p>The State will negotiate where possible. However, the State cannot accept terms that conflict with State statute/law or that will alter the requirements stipulated in the <i>pro forma</i> Contract Scope of Services or Contract Attachments or that would materially affect the basis of proposal evaluations or negatively impact the competitive nature of the procurement process. Moreover, with regard to "Disaster Recovery services related agreements," as described in CN Section 5.2.1, the State cannot accept any terms within these agreements that would change or make additions to the areas of the pro forma Contract listed in CN Section 5.2.2. Any such terms will need to be removed during contract negotiations.</p>
3.	<p>Page 35, Attachment A, Mainframe Requirements</p> <p>The minimum amount of main storage available on a z-9 CPU is 16GB. In attachment A the State specifies a requirement for 10GB of main storage. Please clarify this requirement.</p>	<p>The Mainframe Environment Main Storage requirement has been increased to 32GB. See the amended Contract Attachment A in the revised CN document below.</p>
4.	<p>Page 35, Attachment A, Mainframe Requirements</p> <p>What type of OSA Express adapter does the State require?</p>	<p>2 OSA Express 1.75-GbE SX 1 OSA-Express GbE SX</p> <p>The number of OSA Express Adapters for the Mainframe Environment has been increased to three (3). See the amended Contract Attachment A in the revised CN document below.</p>
5.	<p>Page 36, Attachment B - TennCare Equipment Requirements and Page 39, Attachment C - Enterprise Windows/Linux Requirements</p> <p>Please verify the method of backup/restore in terms of tape requirements. There does not</p>	<p>In the TennCare Environment, the Intel servers access data that is on the SAN. The L700 Tape Library, equipped with the twelve (12) LTO-2 Tape Drives, as specified with the Interchange Online Server on page 37, performs backup of the SAN data.</p> <p>The Intel servers in the Enterprise Windows/Linux</p>

Item #	Question/Comment	State/Response
	appear to be any specific tape requirements for the Intel servers.	environment are backed up with the same L700, which is connected to the SAN via fiber channel. Servers with local storage are connected via the 10/100/1000 Ethernet LAN.
6.	<p>Page 36, Attachments B,C and D</p> <p>Will each platform handle its own SAN requirements or will all SAN requirements be consolidated under one platform?</p>	The SAN for all Environments will be managed in a consolidated manner from the UNIX Environment.
7.	<p>Sections A13.9. A.14.9 and A.15.9</p> <p>The Contractor must provide optional capability for "real time" data replication with contracted SAN technology. Pricing must be based on monthly storage used.</p> <p>[a] Please elaborate/clarify "Pricing must be based on monthly storage used".</p> <p>[b] Please explain your interpretation of "real time" data replication.</p>	<p>[a/b] "Real Time Data Replication" refers to <u>remote data vaulting</u> type services. "Real time" would be continuous data replication for those systems with a Recovery Point Objective (RPO) of less than or equal to five (5) minutes. Other systems would be configured for batch replication timeframes from less than one (1) hour to once every twenty-four (24) hours, depending on the RPO requirements for that specific system.</p> <p>The CN document has been revised to include multiple data replication levels based on RPO. Although, the use of these replication services is at the State's option, Proposers must provide rates for the data replication levels in each of the Environments specified in Contract Attachments B, C, and D. The rates for each Environment must be based on a per GB per month charge.</p> <p>See Contract Sections A.13.9, A.14.9, and A.15.9, Contract Attachment F, and CN Attachment 6.4, Table Two in the revised CN document below.</p>
8.	<p>Page 36, Attachment B, TennCare Equipment Requirements</p> <p>What make/model is the SAN disk?</p>	Hitachi 9990
9.	<p>Page 39, Attachment C, Enterprise Windows/Linux Requirement</p> <p>What make/model is the SAN disk?</p>	Hitachi 9990
10.	<p>Page 41, Attachment D, Enterprise Unix Requirements</p> <p>What make/model is the SAN disk?</p>	Hitachi 9990
11.	<p>The following [vendor name deleted] questions apply to ATTACHMENTS B,C & D and relate to "real time " data replication.</p> <p>[a] What is your Recovery Time Objective (RTO)?</p> <p>[b] What is your Recovery Point Objective (RPO)?</p> <p>[c] Is all of the Data on the SAN to be replicated?</p> <p>[d] Are there any interdependencies between applications?</p> <p>[e] Which servers are to be replicated in a</p>	<p>[a/b] The Recovery Time Objective (RTO) and Recovery Point Objective (RPO) for data replication services will vary, depending on the system requirements for any given specific system. The following represents the typical requirements for a mission critical system:</p> <p>RTO = < 1 hour</p> <p>RPO = < 5 minutes</p> <p>[c] The SAN will support multiple systems of varying</p>

Item #	Question/Comment	State/Response
	<p>dedicated environment?</p> <p>[f] Do you tier your data? Do you have different recovery objectives by Application/Server?</p> <p>[g] Is any of the data that is 'direct attached' to the servers required to be replicated?</p> <p>[h] Please describe or provide a diagram your network infrastructure environment.</p> <p>[i] What is the Daily Change Rate of the data (either by application or SAN)?</p> <p>[j] Are there any large spikes (i.e. month end) in the Data Change rate?</p>	<p>levels of criticality. Some data will be replicated at a "high frequency" and some will be batch replicated once per day. Some data on the SAN will not be replicated at all. See State's response to Amendment #1, item 7b above.</p> <p>[d] Yes; for example, in some cases multiple systems will be accessing the same database.</p> <p>[e] The State's data replication concept might be better expressed as "DATA VAULTING". We would not "replicate" individual servers, but in the event of a Disaster event, we would use the replicated data system instead of shipping/carrying hundreds of tapes to the Recovery Center. We would replicate Data Partitions, NOT servers – and that data will be used by multiple servers.</p> <p>[f] We do not tier the data for the systems that we are considering for the data replication services. See the State's responses to Amendment #1, items 7b and 11a above regarding RPO.</p> <p>[g] For the systems requiring data replication, there would be no data on direct attached drives. All data would be on the SAN.</p> <p>[h] This should not be necessary. We are requesting the cost to replicate data to a remote SAN with the ability to use that data as a part of our overall Disaster Recovery strategy, thereby eliminating the time delays for a traditional tape based restoration.</p> <p>[i] This information is not known by the State at this time.</p> <p>[j] This information is also unknown; however, there are no known processes or significant data altering processes that should cause a significant spike in data change rates.</p>
12.	<p>For no additional monthly fees, would the State like the option for Open Systems listed in TennCare, Enterprise Windows/Linux and Enterprise Unix available to be classified as "Mobile" and brought to the State in the event of a disaster? This would allow flexibility for the State to truly assess the situation and minimize travel for State employees in the event of a smaller scale disaster.</p>	<p>The Proposer must bid based on the requirements stipulated in the <i>pro forma</i> Contract Scope of Services and Contract Attachments. Otherwise, the proposal may be considered a proposal of alternate services and be rejected, as stated in CN Section 4.3.3.</p> <p>However, the proposer may offer services <u>in addition</u> to the required services in accordance with CN Section 4.5. If the Proposer is the winning bidder, these additional services may be added to the Contract at the sole discretion of the State.</p>
13.	<p>[Vendor name deleted] can recover the State's technology at our Recovery Centers, however, we only maintain a single Recovery Center for Cold Site. In 25 years, one customer out of 2500 actual disaster has used Cold Site. It creates a second "planned" disaster when the State moves home. Is a single Cold Site acceptable?</p>	<p>The State will accept a single Cold Site. However, if after forty-two (42) consecutive days in the Recovery Center, Cold Site facilities are not available to the State, the Contractor must allow the State to remain in the Recovery Center at the Cold Site daily rate for up to an additional six (6) consecutive calendar months or</p>

Item #	Question/Comment	State/Response
		<p>until Cold Site facilities are available.</p> <p>See <i>pro forma</i> Contract Section A.3 in the revised CN document below.</p>
14.	Can the vendor allow customer's "greater rights of access" than what is given to the State?	<p>The State does not know what the vendor means by "greater rights of access."</p> <p>However, regardless of what the vendor means by this phrase, the State's requirements for access to the Contactor-provided recovery facilities and services shall be as expressed in <i>pro forma</i> Contract, Section A, particularly the second and third paragraphs of Section A.3 and the following sections: A.12.1, A.13.1, A.14.1, A.15.1, and A.16.1.</p> <p>As long as the Contractor complies with the State's requirements as expressed in Contract Section A, the State does not intend to specify or constrain the "rights of access" the vendor provides to other customers.</p>
15.	Can the vendor sell block time agreements to new customers who are currently experiencing a disaster?	See State's response to Amendment #1, item 14 above.
16.	Must the equipment provided to support the State be used exclusively for disaster recovery or can it be used to support production for other customers?	The DASD for the mainframe must be exclusive to the State's systems. The server hardware for all systems may be shared with other customers as long as virtualization and partitioning provide complete data security, data integrity, and the necessary system performance required by the State.
17.	<p>A.12.1, A.13.1, A.14.1, A.15.1</p> <p>Additional test time is requested in blocks of 4 hours. [Vendor name deleted] provides customer test time in 8 hour blocks. Will the State revise the request to an 8 hour test block?</p>	<p>Additional test time must be bid in four (4) hour blocks to keep the State from paying for a significant number of unused hours. In previous tests, two (2) or so additional hours have been needed to complete a test. The State understands that Disaster Recovery vendors must schedule testing time and will pay for four (4) hours (half day) when only two (2) hours are needed, but will not pay for eight (8) hours (full day) when only two (2) hours are needed.</p>
18.	<p><u>Mainframe</u></p> <p>A.9. Tape Handling Staff during a test or disaster – please clarify this request. Does the State want this service invoiced as incurred?</p>	<p>Yes, the State will pay for Tape Handling Staff when the services are used for a Disaster Recovery event or test, at the rates that will be recorded in Contract Attachment F.</p> <p>The vendor has apparently asked this question only in regard to the Mainframe Configuration. However, please note that tape handling is also an optional service for TennCare Equipment, Enterprise Windows/Linux, and Enterprise UNIX.</p>
19.	<p>A.12.3</p> <p>[a] What does the State use today to erase DASD?</p> <p>[b] Does the State use a script or software?</p> <p>[c] How long does (or would) it take the State to erase its DASD?</p>	[a/b/c] The State's Disaster Recovery Contractor has always erased the data. Therefore, the State does not know what script or software is used or how long it takes to erase the data. Whenever the State decommissions mainframe DASD, we run ICKDSF and do a full init to write binary zeros over all tracks.
20.	<p>A.12.3</p> <p>Is the State willing to delete the data itself as long</p>	The State is not willing to delete the data itself. The Contractor must erase the data as directed in <i>pro forma</i> Contract Section A.

Item #	Question/Comment	State/Response
	as it does not impact the requested test time?	
21.	<p>A.12.5</p> <p>Please list the special remote software the State uses today.</p>	<p>The State requires the ability to remotely control our Disaster Recovery effort, without State staff having to go to the vendor site. Our experience so far has been with direct dial-up connections, which do not require special software on either end. Our intent is to be able to make this work over a public internet connection, so that we are not tied to a “private network” connection. The reference to “remote software” is based on what the new Contractor would require to allow this “public internet” connectivity into the recovery site network. We would expect some type of VPN interface at the least. Any special software required to allow this type of connection must be supplied by the Contractor if it is not currently in use by the State. We currently utilize Cicso’s VPN client.</p> <p>The Contractor must have connectivity solutions for remote IPL (mainframe) or remote management and operational control of all Environments.</p>
22.	<p><u>TennCare</u></p> <p>A.13.4</p> <p>[a] What does the State use today to erase DASD?</p> <p>[b] Does the State use a script or software?</p> <p>[c] How long does (or would) it take the State to erase its DASD?</p>	<p>[a/b/c] The State’s Disaster Recovery Contractor has always erased the data. Therefore, the State does not know what script or software is used or how long it takes to erase the data.</p>
23.	<p>A.13.4</p> <p>Is the State willing to delete the data itself as long as it does not impact the requested test time?</p>	<p>See State’s response to Amendment #1, item 20 above.</p>
24.	<p>A.13.5</p> <p>Please list the special remote software the State uses today.</p>	<p>See State’s response to Amendment #1, item 21 above.</p>
25.	<p>A.13.7</p> <p>[a] Please clarify what the State wants to analyze or collect on each system.</p> <p>[b] Please identify what the State uses today.</p>	<p>[a] The Environments in Contract Attachments A through E are not static and will change throughout the term of the Contract. See Contract Section C.3.b. The required software tools must provide automated data collection to supply information regarding how an Environment is configured and equipped to the Disaster Recovery Contractor. The software will assist the Contractor in keeping the Disaster Recovery equipment equivalent to the State’s Environment. The software tool should collect the information required by the Contractor to correctly configure and load equipment at the Recovery Center.</p> <p>[b] The software script/tool used today is provided by our current Disaster Recovery Contractor and is proprietary to that Contractor.</p>
26.	<p>A.13.9</p> <p>[a] Please list the manufacturer and model of existing SAN.</p> <p>[b] Will the State provide the equipment, software</p>	<p>[a] Hitachi 9990</p> <p>[b] The State expects to provide the telecommunications required for this function, the networking hardware required (routers/switches),</p>

Item #	Question/Comment	State/Response
	<p>and telecommunications for replication?</p> <p>[c] What is the change rate of the SAN?</p> <p>[d] Does the State want a Hardware or Software replication solution?</p>	<p>along with any software necessary for the replication. The Vendor is expected to provide the remote SAN and anything required to manage the remote SAN at their site.</p> <p>[c] This information is not known by the State at this time.</p> <p>[d] The State requires hardware based replication.</p>
27.	<p><u>Enterprise Windows/Linux</u> A.14.4</p> <p>[a] What does the State use today to erase DASD?</p> <p>[b] Does the State use a script or software?</p> <p>[c] How long does (or would) it take the State to erase its DASD?</p>	See State's response to Amendment #1, item 22 above.
28.	<p>A.14.4</p> <p>Is the State willing to delete the data itself as long as it does not impact the requested test time?</p>	See State's response to Amendment #1, item 20 above.
29.	<p>A.14.5</p> <p>Please list the special remote software the State uses today.</p>	See State's response to Amendment #1, item 21 above.
30.	<p>A.14.7</p> <p>[a] Please clarify what the State wants to analyze or collect on each system.</p> <p>[b] Please identify what the State uses today.</p>	See State's response to Amendment #1, item 25 above.
31.	<p>A.14.9</p> <p>[a] Please list the manufacturer and model of existing SAN.</p> <p>[b] Will the State provide the equipment, software and telecommunications for replication?</p> <p>[c] What is the change rate of the SAN?</p> <p>[d] Does the State want a Hardware or Software replication solution?</p>	See State's response to Amendment #1, item 26 above.
32.	<p><u>Enterprise UNIX</u> A.15.4</p> <p>[a] What does the State use today to erase DASD?</p> <p>[b] Does the State use a script or software?</p> <p>[c] How long does (or would) it take the State to erase its DASD?</p>	See State's response to Amendment #1, item 22 above.
33.	<p>A.15.4</p> <p>Is the State willing to delete the data itself as long as it does not impact the requested test time?</p>	See State's response to Amendment #1, item 20 above.
34.	<p>A.15.5</p> <p>Please list the special remote software the State uses today.</p>	See State's response to Amendment #1, item 21 above.
35.	A.15.7	See State's response to Amendment #1, item 25

Item #	Question/Comment	State/Response
	[a] Please clarify what the State wants to analyze or collect on each system. [b] Please identify what the State uses today.	above.
36.	A.15.9 [a] Please list the manufacturer and model of existing SAN. [b] Will the State provide the equipment, software and telecommunications for replication? [c] What is the change rate of the SAN? [d] Does the State want a Hardware or Software replication solution?	See State's response to Amendment #1, item 26 above.
37.	<u>Print/Mail Services</u> [a] Are all packages mailed in #10 envelopes? [b] If so, what are the specs for the envelope?	[a] No [b] Envelopes used are 4.125" x 9.5", 6" x 9" and 6" x 9 1/2". We use a # 10 envelope with (2) windows for some applications. The Window placement and size can vary depending on an agencies needs.
38.	[a] Is there a #9 Business Reply envelope for any of the mailings? [b] If so, what are the specs for the envelope?	[a] Yes [b] 3.875" X 8.875"
39.	Is all print in black and white?	Yes, currently all print is black and white.
40.	[a] Is there a logo on the forms and/or envelopes? [b] If so, is the logo black and white or 4 color?	[a] The State will provide all pre-printed forms to the Contractor. See the amended Contract Section C.3.a. in the revised CN document below. There are no preprinted logos on envelopes. [b] Some forms do have black and white logos in the print file. The State will provide electronic copies of AFP print libraries and Xerox resource libraries to the Contractor. These libraries will provide all electronic forms for printing.
41.	Do you use highlight color?	We do not use a highlight color.
42.	[a] Do you have any static backers? [b] If not static, do you have a backer at all?	Since the State does not know what "backers" – "static" or otherwise – are, we cannot answer the question.
43.	What color check stock do you use?	We use two colors of check stock - light green and light red. The State will supply the check stock to the Contractor. See the amended Contract Section C.3.a. in the revised CN document below.
44.	Please define what exactly consist of a [a] MICR package, [b] Simplex/Duplex Page Package, and [c] Continuous Forms Simplex/Duplex Package. (i.e. stock, envelope, colors, etc)	See <i>pro forma</i> Contract Section A.16.3. [a] See State's response to Amendment #1, item 43 above. [b] Cut sheet stock 8 1/2" x 11" should be 20 # white stock. [c] Continuous Roll feed 18" & 12" should be 20 # white stock.
45.	What are the peak and low amounts for [a] MICR packages, [b] Simplex/Duplex Page packages, and [c] Continuous Forms Simplex/Duplex packages.	Typical print job minimum and maximums are as follows: [a] Less than ten (10) sheets to five (5) boxes per job

Item #	Question/Comment	State/Response
		[b] Less than ten (10) sheets to twenty (20) boxes per job [c] Less than ten (10) sheets to twenty (20) boxes per job There are some infrequent print jobs that are much larger in output. The total output pages are included in the Print Volumes in Contract Attachment E.
46.	[a] When will the files be transmitted? Daily, weekly, monthly, etc [b] What time of the day will a file arrive?	Files will be transmitted daily and will arrive at various times as they are created throughout a twenty-four (24) hour day.
47.	What is the expected turn time? (From the time we receive your file, when do you expect the package to be mailed)	The State expects the package to be mailed the next day after the file is received.
48.	Can you be more specific on the number of impressions to be printed on the [a] cut-sheet and [b] continuous form packages?	Print volumes are specified on Contract Attachment E.
50.	Can you send hard samples of the documents and envelopes?	Hard samples of documents and envelopes will be provided to the Disaster Recovery Contractor during testing and as required to configure systems.
51.	Can you send a sample print file?	Sample print files will be provided to the Disaster Recovery Contractor during testing and as required to configure systems.
52.	How did the State determine the appropriate amount of hours for each recovery environment? Ex Mainframe 80 hours and TennCare 160 hours.	The hours were determined based on the State's 10+ years of experience with Disaster Recovery testing.
53.	Would the State be interested to explore how we can shorten tests to reduce the time commitment for State employees being away from home and still produce the test results expected?	See State's response to Amendment #1, item 12 above.

- C. Delete RFS 317.03-162-07 in its entirety and replace the document with RFP 317.03-162-07, Release 2 (attached hereto).

NOTE: ALL revisions from the previously released RFP document will be emphasized in the attached document as follows. (1) The sentence or paragraph involving any revision in which text is replaced with new text or new text is simply added will be highlighted in yellow. (2) The location of any revision in which text is deleted but not replaced will be denoted by the words, "TEXT DELETED**" in bold red caps inserted in the place of the text that is deleted but not replaced.**



**STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION**

**COMPETITIVE NEGOTIATION
FOR
DISASTER RECOVERY SERVICES**

RFS NUMBER: 317.03-162-07

Release 2

February 6, 2007

CONTENTS

SECTION

- 1 INTRODUCTION & PROPOSER PRE-QUALIFICATION**
- 2 COMPETITIVE NEGOTIATION SCHEDULE OF EVENTS**
- 3 PROPOSAL REQUIREMENTS**
- 4 GENERAL REQUIREMENTS & CONTRACTING INFORMATION**
- 5 CONTRACT NEGOTIATION, PROPOSAL EVALUATION, & CONTRACT AWARD**

CN ATTACHMENTS:

- 6.1 *Pro Forma* Contract**

CONTRACT ATTACHMENTS:

- A Mainframe Requirements**
- B TennCare Equipment Requirements**
- C Enterprise Windows/Linux Requirements**
- D Enterprise UNIX Requirements**
- E Print/Mail Requirements**
- F Unit Rates**
- G Attestation Re Personnel Used in Contract Performance**

CN ATTACHMENTS, continued:

- 6.2 Proposal Transmittal/Statement Of Certifications & Assurances**
- 6.3 Technical Proposal & Evaluation Guide**
- 6.4 Cost Proposal & Scoring Guide**
- 6.5 Proposal Score Summary Matrix**
- 6.6 Reference Information Questionnaire**
- 6.7 Contract Language Restrictions and Non-Negotiable Contractual Language**
- 6.8 Proposer Contract**

1 INTRODUCTION

1.1 Statement of Purpose

The State of Tennessee, Department of Finance and Administration, hereinafter referred to as the State, has issued this Competitive Negotiation (CN) to define the State's minimum service requirements; solicit proposals; detail proposal requirements; and, outline the State's process for evaluating proposals and selecting the contractor.

Through this CN, the State seeks to buy the best services at the most favorable, competitive prices and to give the pre-qualified qualified businesses opportunity to do business with the state as contractors and ALL qualified businesses, including those that are owned by minorities, women, persons with a disability, and small business enterprises, opportunity to do business with the state as sub-contractors.

The State intends to secure a contract where the Contractor shall make available a Recovery Center and Cold Site of adequate size for the State that will provide an effective means of minimizing the potential impact of a major Disaster affecting the State's Central Processing Facility and its communications network.

The Contractor shall provide the computer configurations or equivalent equipment specified in Attachments A through E at a Contractor Recovery Center for a period of up to forty-two (42) consecutive days following a Disaster Declaration by the State. The Contractor will provide and maintain a minimum of three (3) Recovery Centers from which such configuration may be provided.

The Contractor shall provide the necessary facilities and equipment to support the Print/Mail Environment specified in Attachment E at a Contractor Recovery Center for a period of up to three hundred sixty-five (365) consecutive days following a Print-Only Disaster Declaration by the State. The Contractor will provide and maintain a minimum of one (1) Recovery Center from which Print/Mail Services may be provided.

Pre-qualified potential Proposers are cautioned to read this CN thoroughly and respond accordingly. Although much of the CN document was copied from the recently canceled RPF 317.03-150-07 to procure Disaster Recovery services, changes have been made to all areas including the process, *pro forma* contract, requirements, and required responses.

1.2 Scope of Service, Contract Period, and Required Terms and Conditions

The CN Attachment 6.1, *Pro Forma* Contract details the State's:

- Scope of Services and Deliverables in Section A;
- Contract Period in Section B;
- Payment Terms in Section C;
- Standard Terms and Conditions in Section D; and,
- Special Terms and Conditions in Section E.

The CN includes a contract negotiation phase prior to proposal submission. The State will consider changes and additions to the *Pro Forma* Contract during this time as detailed in CN Section 5.2, Contract Negotiation Process.

1.3 Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the State's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the State or in the employment practices of the State's contractors. Accordingly, all vendors entering into contracts with the State shall, upon request,

be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

The State has designated the following to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and applicable federal regulations.

Buddy Lea, Director of Resource Development and Support
12th Floor, Wm. R. Snodgrass Tennessee Tower
312 8th Avenue North
Nashville, TN 37243
Tele: (615) 741-6049

1.4 Assistance to Proposers With a Disability

A Proposer with a disability may receive accommodation regarding the means of communicating this CN and participating in this CN process. A Proposer with a disability should contact the CN Coordinator to request reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the CN Section 2, Schedule of Events.

1.5 CN Communications

1.5.1 Unauthorized contact regarding this CN with employees or officials of the State of Tennessee other than the CN Coordinator detailed below may result in disqualification from this procurement process.

1.5.1.1 Interested Parties must direct all communications regarding this CN to the following CN Coordinator, who is the state of Tennessee's only official point of contact for this CN.

Travis Johnson, CN Coordinator
Department of Finance and Administration
17th Floor, Wm. R. Snodgrass Tennessee Tower
312 8th Avenue North
Nashville, TN 37243-1510
Tele: (615) 741-5727
Fax: (615) 741-6164
Email: Travis.Johnson@state.tn.us

1.5.1.2 Notwithstanding the foregoing, Interested Parties may contact the staff of the Governor's Office of Diversity Business Enterprise for general, public information regarding this CN, assistance available from the Governor's Office of Diversity Business Enterprise, or potential future state procurements.

1.5.2 The State has assigned the following CN identification number that must be referenced in all communications regarding the CN:

RFS- # 317.03-162-07

1.5.3 Any oral communications shall be considered unofficial and non-binding with regard to this CN.

1.5.4 Each Proposer shall assume the risk of the method of dispatching any communication or proposal to the State. The State assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or electronic "postmarking" of a communication or proposal to the State by a deadline date shall not substitute for actual receipt of a communication or proposal by the State.

1.5.5 The CN Coordinator must receive all written comments, including questions and requests for clarification, no later than the Written Comments Deadline detailed in the CN Section 2, Schedule of Events.

- 1.5.6 The State reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification. The State's official responses and other official communications pursuant to this CN shall constitute an amendment of this CN.
- 1.5.7 The State will convey all official responses and communications pursuant to this CN to the pre-qualified potential Proposers with the exception of responses and communications during contract negotiations regarding a specific pre-qualified potential Proposer's draft Proposer Contract. Such responses and communications will only be conveyed to the specific pre-qualified potential Proposer.
- 1.5.8 Only the State's official, written responses and communications shall be considered binding with regard to this CN.
- 1.5.9 The State reserves the right to determine, at its sole discretion, the method of conveying official responses and communications pursuant to this CN (e.g., written, facsimile, electronic mail, or Internet posting).
- Most important documents will be posted on the following website:
<http://state.tn.us/finance/oir/pcm/rfps.html>
- 1.5.10 Any data or factual information provided by the State, in this CN or an official response or communication, shall be deemed for informational purposes only, and if a Proposer relies on such data or factual information, the Proposer should either: (1) independently verify the information; or, (2) obtain the State's written consent to rely thereon.

1.6 Pre-Qualified Potential Proposers

The recently canceled RFP process to procure Disaster Recovery services (RFP 317.03-150-07) is being used as a pre-qualification stage for this CN. **Only the vendors who submitted proposals to the canceled RFP will be allowed to participate in the CN as Proposers,**

Therefore the following vendors are considered by the State as pre-qualified potential Proposers to the CN:

- International Business Machines (IBM)
- SunGard

Any vendor may participate in the CN as a sub-contractor of a pre-qualified potential Proposer. However, the State will only communicate with a pre-qualified potential Proposer, referred to hereafter as the potential Proposer, regarding the CN.

1.7 Proposal Deadline

Proposals must be submitted no later than the Proposal Deadline time and date detailed in the CN Section 2, Schedule of Events. A proposal must respond to the written CN and any CN exhibits, attachments, or amendments. A late proposal shall not be accepted, and a Proposer's failure to submit a proposal before the deadline shall cause the proposal to be disqualified.

1.8 Mandatory Pre-Proposal Conference

A Pre-Proposal Conference will be held at the time and date detailed in the CN Section 2, Schedule of Events. The purpose of the conference is to describe the CN process and scope of services. While questions will be entertained, the response to any question at the Pre-Proposal Conference shall be considered tentative and non-binding with regard to this CN. Questions concerning the CN should be submitted in writing prior to the Written Comments Deadline date detailed in the CN Section 2, Schedule of Events. To ensure accurate, consistent responses to all known potential Proposers, the official response to questions will be issued by the State as described in CN Sections 1.5, *et seq.*, above and on the date detailed in the CN Section 2, Schedule of Events.

Pre-Proposal Conference attendance is **MANDATORY**. **Potential Proposers must attend this meeting to remain eligible to submit a proposal.** The conference will be held at:

Montgomery Room
3rd Floor Conference Center
Wm. R. Snodgrass Tennessee Tower
312 8th Avenue North
Nashville, Tennessee 37243

2 CN SCHEDULE OF EVENTS

The following Schedule of Events represents the State's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., Central Time.

CN SCHEDULE OF EVENTS		
NOTICE: The State reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. The State will communicate any adjustment to the Schedule of Events to the potential Proposers.		
EVENT	TIME	DATE (all dates are state business days)
15. State Issues CN		January 12, 2007
16. Disability Accommodation Request Deadline		January 19, 2007
17. Mandatory Pre-proposal Conference	1:30 p.m. CST	January 22, 2007
18. Written Comments Deadline		January 29, 2007
19. State Responds to Written Comments		February 6, 2007
20. Initial Draft Contract Deadline	2:00 p.m.	February 13, 2007
21. Contract Negotiation Deadline	2:00 p.m.	March 13, 2007
22. Proposal Deadline	2:00 p.m.	March 20, 2007
23. State Completes Technical Proposal Evaluations		March 28, 2007
24. State Opens Cost Proposals and Calculates Scores	9:00 a.m.	March 30, 2007
25. State Issues Evaluation Notice <u>and</u> Opens CN Files for Public Inspection	9:00 a.m.	April 2, 2007
26. Contract Signing		April 13, 2007
27. Contract Signature Deadline		April 20, 2007
28. Contract Start Date		May 1, 2007

3 PROPOSAL REQUIREMENTS

Each Proposer must submit a proposal in response to this CN with the most favorable terms that the Proposer can offer. There will be no best and final offer procedure.

3.1 Proposal Form and Delivery

3.1.1 Each response to this CN must consist of a Technical Proposal and a Cost Proposal (as described below).

3.1.2 Each Proposer must submit one (1) original and eight (8) copies and one (1) CD containing a copy in ".pdf" format of the Technical Proposal to the State in a sealed package that is clearly marked:

"Technical Proposal in Response to RFS- # 317.03-162-07 -- Do Not Open"

NOTE: The CD copy must be identical to the hardcopies submitted; however, it is for electronic search purposes only and is not the official copy.

3.1.3 Each Proposer must submit one (1) Cost Proposal to the State in a separate, sealed package that is clearly marked:

"Cost Proposal in Response to RFS- # 317.03-162-07 -- Do Not Open"

3.1.4 If a Proposer encloses the separately sealed proposals (as detailed above) in a larger package for mailing, the Proposer must clearly mark the outermost package:

"Contains Separately Sealed Technical and Cost Proposals for RFS- # 317.03-162-07"

3.1.5 The State must receive all proposals in response to this CN, at the following address, no later than the Proposal Deadline time and date detailed in the CN Section 2, Schedule of Events.

Department of Finance and Administration
Office of Procurement and Contract Management
ATTN: Travis Johnson, CN Coordinator
17th Floor, Wm. R. Snodgrass Tennessee Tower
312 8th Avenue North
Nashville, TN 37243-1510

3.1.6 A Proposer may not deliver a proposal orally or by any means of electronic transmission.

3.2 Technical Proposal

3.2.1 The CN Attachment 6.3, Technical Proposal and Evaluation Guide details specific requirements for making a Technical Proposal in response to this CN. This guide includes mandatory and general requirements as well as technical queries requiring a written response.

NOTICE: No pricing information shall be included in the Technical Proposal. Inclusion of Cost Proposal amounts in the Technical Proposal shall make the proposal non-responsive and the State shall reject it.

3.2.2 Each Proposer must use the Technical Proposal and Evaluation Guide to organize, reference, and draft the Technical Proposal. Each Proposer should duplicate the Technical Proposal and Evaluation Guide and use it as a table of contents covering the Technical Proposal (adding proposal page numbers as appropriate).

3.2.3 Each proposal should be economically prepared, with emphasis on completeness and clarity of content. A proposal, as well as any reference material presented, must be written in English and must be written on standard 8 1/2" x 11" paper (although foldouts containing charts, spreadsheets, and oversize exhibits are permissible). All proposal pages must be numbered.

- 3.2.4 All information included in a Technical Proposal should be relevant to a specific requirement detailed in the Technical Proposal and Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will in no way contribute to the evaluation process.
- 3.2.5 The State may determine a proposal to be non-responsive and reject it if the Proposer fails to organize and properly reference the Technical Proposal as required by this CN and the Technical Proposal and Evaluation Guide.
- 3.2.6 The State may determine a proposal to be non-responsive and reject it if the Technical Proposal document fails to appropriately address/meet all of the requirements detailed in the Technical Proposal and Evaluation Guide.

3.3 Cost Proposal

- 3.3.1 The Cost Proposal must be submitted to the State in a sealed package separate from the Technical proposal.
- 3.3.2 Each Cost Proposal must be recorded on an exact duplicate of the CN Attachment 6.4, Cost Proposal and Evaluation Guide.
- 3.3.3 Each Proposer shall ONLY record the proposed cost exactly as required by the Cost Proposal and Evaluation Guide and shall NOT record any other rates, amounts, or information.
- 3.3.4 The proposed cost shall incorporate all costs for services under the contract for the total contract period.
- 3.3.5 The Proposer must sign and date the Cost Proposal.
- 3.3.6 If a Proposer fails to submit a Cost Proposal as required, the State shall determine the proposal to be non-responsive and reject it.

4 GENERAL REQUIREMENTS & CONTRACTING INFORMATION

4.1 Proposer Required Review and Waiver of Objections

Each pre-qualified potential Proposer must carefully review this CN and all attachments, including but not limited to the *pro forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called “comments”). Comments concerning CN objections must be made in writing and received by the State no later than the Written Comments Deadline detailed in the CN Section 2, Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made.

Protests based on any objection shall be considered waived and invalid if these comments/objections have not been brought to the attention of the State, in writing, by the Written Comments Deadline.

4.2 CN Amendment and Cancellation

The State reserves the unilateral right to amend this CN in writing at any time. If a CN amendment is issued, the State will convey such amendment to the pre-qualified potential Proposers. Each proposal must respond to the final written CN and any exhibits, attachments, and amendments.

The State of Tennessee reserves the right, at its sole discretion, to cancel and reissue this CN or to cancel this CN in its entirety in accordance with applicable laws and regulations.

4.3 Proposal Prohibitions and Right of Rejection

4.3.1 The State of Tennessee reserves the right, at its sole discretion, to reject any and all proposals in accordance with applicable laws and regulations.

4.3.2 Each proposal must comply with all of the terms of this CN and all applicable State laws and regulations. The State may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this CN. The State may consider any proposal that does not meet the requirements of this CN to be non-responsive, and the State may reject such a proposal.

4.3.3 A proposal of alternate services (*i.e.*, a proposal that offers services different from those requested by this CN) shall be considered non-responsive and rejected.

4.3.4 A Proposer may not restrict the rights of the State or otherwise qualify a proposal. The State may determine such a proposal to be a non-responsive counteroffer, and the proposal may be rejected.

4.3.5 A Proposer may not submit the Proposer's own contract terms and conditions in a response to this CN after the Contract Negotiation Deadline time and date detailed in the CN Section 2, Schedule of Events. If a proposal contains such terms and conditions, the State may determine, at its sole discretion, the proposal to be a non-responsive counteroffer, and the proposal may be rejected.

4.3.6 A Proposer shall not submit more than one proposal. Submitting more than one proposal shall result in the disqualification of the Proposer.

4.3.7 A Proposer shall not submit multiple proposals in different forms. This prohibited action shall be defined as a Proposer submitting one proposal as a prime contractor and permitting a second Proposer to submit another proposal with the first Proposer offered as a subcontractor. This restriction does not prohibit different Proposers from offering the same subcontractor as a part of their proposals, provided that the subcontractor does not also submit a proposal as a prime contractor. Submitting multiple proposals in different forms may result in the disqualification of all Proposers knowingly involved.

4.3.8 The State shall reject a proposal if the Cost Proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any

other Proposer. Regardless of the time of detection, the State shall consider any of the foregoing prohibited actions to be grounds for proposal rejection or contract termination.

- 4.3.9 The State shall not contract with or consider a proposal from:
- 4.3.9.1 an individual who is, or within the past six months has been, an employee or official of the State of Tennessee;
 - 4.3.9.2 a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this shall not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
 - 4.3.9.3 a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
 - 4.3.9.4 any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this CN or its scope of services shall be considered to have been given information that would afford an unfair advantage over other Proposers, and such individual, company, or other entity may not submit a proposal in response to this CN.
 - 4.3.9.5 For the purposes of applying the requirements of CN subsection 4.3.9, *et. seq.*, an individual shall be deemed an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid.
 - 4.3.10 The State reserves the right, at its sole discretion, to waive a proposal's variances from full compliance with this CN. If the State waives minor variances in a proposal, such waiver shall not modify the CN requirements or excuse the Proposer from full compliance with such. Notwithstanding any minor variance, the State may hold any Proposer to strict compliance with this CN.

4.4 Incorrect Proposal Information

If the State determines that a Proposer has provided, for consideration in this CN process, incorrect information that the Proposer knew or should have known was materially incorrect, that proposal shall be determined non-responsive and shall be rejected.

4.5 Proposal of Additional Services

If a proposal offers services in addition to those required by and described in this CN, the additional services may be added to the contract before contract signing at the sole discretion of the State. Notwithstanding the foregoing, a Proposer shall not propose any additional cost amount(s) or rate(s) for additional services.

NOTICE: The Proposer's Cost Proposal shall record only the proposed cost as required in this CN and shall not record any other rates, amounts, or information. If a Proposer fails to submit a Cost Proposal as required, the State shall determine the proposal to be non-responsive and shall reject the proposal.

4.6 Assignment and Subcontracting

- 4.6.1 The Proposer awarded a contract pursuant to this CN may not subcontract, transfer, or assign any portion of the contract without the State's prior, written approval.

- 4.6.2 A subcontractor may only be substituted for a proposed subcontractor at the discretion of the State and with the State's prior, written approval. The State's written approval of substituted or additional subcontractors will not be unreasonably withheld and will be expedited as necessary to avoid delays if the State declares a Disaster.
- 4.6.3 At its sole discretion, the State reserves the right to refuse approval of any subcontract, transfer, or assignment.
- 4.6.4 Notwithstanding State approval of each subcontractor, the Proposer, if awarded a contract pursuant to this CN, shall be the prime contractor and shall be responsible for all work performed.

4.7 Right to Refuse Personnel

At its sole discretion, the State reserves the right to refuse any personnel, of the prime contractor or a subcontractor, for use in the performance of a contract pursuant to this CN. The State's approval of personnel will not be unreasonably withheld and will be expedited as necessary to avoid delays if the State declares a Disaster.

4.8 Insurance

The State may require the apparent successful Proposer to provide proof of adequate worker's compensation and public liability insurance coverage before entering into a contract. Additionally, the State may require, at its sole discretion, the apparent successful Proposer to provide proof of adequate professional malpractice liability or other forms of insurance. Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the State shall be in form and substance acceptable to the State.

4.9 Licensure

Before a contract pursuant to this CN is signed, the apparent successful Proposer must hold all necessary, applicable business and professional licenses. The State may require any or all Proposers to submit evidence of proper licensure.

4.10 Service Location and Work Space

The service pursuant to this CN is to be performed, completed, managed, and delivered as detailed in the CN Attachment 6.1, *Pro Forma* Contract or after the Contract Negotiation Deadline time and date detailed in the CN Section 2, Schedule of Events, the CN Attachment 6.8, Proposer Contract. Work space on the State's premises may be available for contractor use in accordance with the contract or at the State's discretion. Any work performed on the State's premises shall be completed during the State's standard business hours.

4.11 Proposal Withdrawal

A Proposer may withdraw a submitted proposal at any time up to the Proposal Deadline time and date detailed in the CN Section 2, Schedule of Events. To do so, a Proposer must submit a written request, signed by a Proposer's authorized representative to withdraw a proposal. After withdrawing a previously submitted proposal, a Proposer may submit another proposal at any time up to the Proposal Deadline.

4.12 Proposal Errors and Amendments

Each Proposer is liable for all proposal errors or omissions. A Proposer will not be allowed to alter or amend proposal documents after the Proposal Deadline time and date detailed in the CN Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

4.13 Proposal Preparation Costs

The State will not pay any costs associated with the preparation, submittal, or presentation of any proposal.

4.14 Disclosure of Proposal Contents

Each proposal and all materials submitted to the State in response to this CN shall become the property of the State of Tennessee. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, shall be held in confidence during the evaluation process. Notwithstanding, a list of actual Proposers submitting timely proposals may be available to the public, upon request, directly after technical proposals are opened by the state.

Upon the completion of the evaluation of proposals, indicated by public release of an Evaluation Notice, the proposals and associated materials shall be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7). By submitting a proposal, the Proposer acknowledges and accepts that the full proposal contents and associated documents shall become open to public inspection.

4.15 Contractor Registration

All service contractors with state of Tennessee contracts must be registered through the Department of Finance and Administration's Service Provider Registry prior to contract approval. However, registration with the state is not required to make a proposal (any unregistered service provider must simply register as required prior to the final contract approval). Refer to the following Internet URL for more information about the Service Provider Registry and to register "on-line."

www.state.tn.us/finance/rds/ocr/sprs.html

4.16 Contract Approval

The CN and the contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Proposer with the apparent best-evaluated proposal or any other Proposer. Contract award and State obligations pursuant thereto shall commence only after the contract is signed by the Contractor and the head of the procuring state agency and after the contract is approved and signed by all other State officials as required by State laws and regulations.

4.17 Contract Payments

All contract payments shall be made in accordance with the contract's Payment Terms and Conditions provisions (refer to CN Attachment 6.1, *Pro Forma* Contract, Section C or, after the Contract Negotiation Deadline time and date detailed in the CN Section 2, Schedule of Events, the CN Attachment 6.8, Proposer Contract, Section C). No payment shall be made until the contract is approved as required by State laws and regulations. Under no conditions shall the State be liable for payment of any type associated with the contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before contract approval by State officials as required by applicable statutes and rules of the State of Tennessee or before the contract start date or after the contract end date specified by the contract. If necessary, the contract end date will be automatically extended to avoid IT service interruption during a declared Disaster.

4.18 Contractor Performance

The Contractor shall be responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and acceptance by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. At reasonable times, the State may inspect those areas of the Contractor's place of business that are related to the performance of the contract. If the State requires such an inspection, the Contractor shall provide reasonable access and assistance.

4.19 Contract Amendment

During the course of this contract, the State may request the Contractor to perform additional work for which the Contractor would be compensated. That work shall be within the general scope of this CN. In such instances, the State shall provide the Contractor a written description of the additional work, and the Contractor shall submit a time schedule for accomplishing the additional work and a price for the additional work based on the rates included in the Contractor's proposal to this CN. If the State and the Contractor reach an agreement regarding the work and associated compensation, such agreement shall be effected by means of a contract amendment. Any such amendment requiring additional work must be mutually agreed upon by the parties and signed by the Contractor and the head of the procuring state agency and must be approved by other State officials as required by State laws and regulations. The Contractor shall not commence additional work until the State has issued a written contract amendment and secured all required approvals.

4.20 Severability

If any provision of this CN is declared by a court to be illegal or in conflict with any law, said decision shall not affect the validity of the remaining CN terms and provisions, and the rights and obligations of the State and Proposers shall be construed and enforced as if the CN did not contain the particular provision held to be invalid.

5 CONTRACT NEGOTIATION, PROPOSAL EVALUATION, & CONTRACT AWARD

5.1 Evaluation Categories and Maximum Points

The State will consider qualifications and experience, technical approach, and cost in the evaluation of proposals. The maximum points that shall be awarded for each of these categories are detailed below.

CATEGORY	MAXIMUM POINTS POSSIBLE
Qualifications and Experience	30
Technical Approach	40
Cost Proposal	30

5.2 Contract Negotiation Process

Prior to Proposal submission, the State intends to negotiate contract terms that are acceptable to both the State and the potential Proposer, referred to hereafter as the potential Proposer. The basis for these negotiations is CN Attachment 6.1, *Pro Forma* Contract. The negotiations will be conducted with each potential Proposer separately and will include verbal discussion with written documentation of changes and additions to the *Pro Forma* Contract. Note that this process will most likely result in different contracts for the potential Proposers. The services and the State's fundamental protections will be the same; however, one potential Proposer's contract may differ in specifics from another potential Proposer's contract.

The agreed-to contract for a potential Proposer will become CN Attachment 6.8, Proposer Contract for the potential Proposer.

A potential Proposer will not be allowed to see draft versions or the agreed-to version of another potential Proposer's contract prior to the Evaluation Notice date detailed in the CN Section 2, Schedule of Events.

The negotiation period will be fixed and each potential Proposer will have the same pre-defined amount of time in which to reach an agreement with the State. Potential Proposers must not construe the State's willingness to accept some potential Proposer contract terms/contractual language as any form of commitment to resolve all issues to the satisfaction of the potential Proposer. The State will disqualify any potential Proposer with whom it cannot agree on a contract by the Contract Negotiation Deadline time and date detailed in the CN Section 2, Schedule of Events.

- 5.2.1 The CN Attachment 6.1, *Pro Forma* Contract will be the basis and beginning point for the agreed-to contract. Each potential Proposer must review and make requested changes and/or additions **directly to the *Pro Forma* Contract**, creating an initial draft of the Proposer Contract. All changes and/or additions to the *Pro Forma* Contract must be specific. The potential Proposer may not state an objection to contract terms/contractual language without providing alternative language for negotiation.

The State will not accept a potential Proposer's standard contract or general terms agreement in place of a modified CN Attachment 6.1, *Pro Forma* Contract. All general contract terms and contractual language requested by the potential Proposer must be integrated into the *Pro Forma* Contract and must be not submitted as an attachment. Existing contract terms and contractual language should be modified in the current location in the *Pro Forma* Contract. Additional contract terms should be added to Contract Sections B, C, D, and E as appropriate.

The State will allow the potential Proposer to submit Disaster Recovery services related agreement(s) as requested attachment(s) to the Contract. If the potential Proposer wishes to submit its own Disaster Recovery services related agreement(s), the following provisions apply:

- Any such agreement(s) shall, if accepted by the State, be “in addition to” and not “in lieu of” the State’s *Pro Forma* Contract.
- Any such agreement(s) must be submitted for the State’s consideration at the same time the Proposer submits the initial draft of the Proposer Contract prior to the start of negotiations.
- The State reserves the right to modify such agreement(s) before acceptance, if the State deems this necessary to meet state legal or business requirements.
- Any such agreement(s), if accepted by the State, will be incorporated as Contract Attachments to the Proposer Contract. The State will not sign any documents other than the agreed-to Proposer Contract of the successful Proposer.

- 5.2.2 To equally evaluate all proposals and preserve the competitive nature of the procurement, the services and unit rates must be the same for all Proposers. Therefore, State **will not consider and will reject** any requested changes or additions to the following areas of the *Pro Forma* Contract during contract negotiations:

Section A, Scope of Services

Attachment A: Mainframe Requirements

Attachment B: TennCare Equipment Requirements

Attachment C: Enterprise Windows/Linux Requirements

Attachment D: Enterprise UNIX Requirements

Attachment E: Print/Mail Requirements

Attachment F: Unit Rates

The State will consider changes and additions to these sections prior to contract negotiations if requested in writing by the Written Comments Deadline detailed in the CN Section 2, Schedule of Events. Any changes or additions will be made by amendment to the CN and will apply to all Proposers.

- 5.2.3 The State is committed to a fair and flexible procurement process that will allow potential Proposers the opportunity to have input into the terms and conditions of the contract. The goal is to arrive at a business arrangement that is in the best interests of the State and the awarded Contractor.
- However, the State is bound by its Constitution and statutes to certain terms and conditions which would not necessarily apply to private business. Such restrictions upon the State include, but are not limited to, the items set forth in CN Attachment 6.7 Contract Language Restrictions and Non-Negotiable Contractual Language. This attachment is to inform potential Proposers in advance that these issues are among those that may arise during contract negotiations. Potential Proposers should review and consider the information in this attachment carefully before requesting changes or additions to the *Pro Forma* Contract.
- 5.2.4 The potential Proposer must include **ALL** requested changes and additions to the *Pro Forma* Contract, including Disaster Recovery services related agreement(s) attachment(s), in the initial draft of the Proposer Contract. During contract negotiations, the State will not consider changes or additions to contract terms that the potential Proposer did not request changes in or additions to in the initial draft of the Proposer Contract, unless such changes are deemed by the State to be in the State’s best interest. The State will not consider the inclusion of Disaster Recovery services related agreement(s) that the potential Proposer did not provide with the initial draft of the Proposer Contract unless such inclusion is deemed by the State to be in the State’s best interest.
- 5.2.5 The initial draft of the Proposer Contract is due to the State by the Initial Draft Contract Deadline time and date detailed in the CN Section 2, Schedule of Events. The initial draft Contract, including any requested Disaster Recovery services related agreement(s), must be delivered in Microsoft Word and all requested changes or additions must be easily identifiable and clearly marked using Word’s

“change tracking” feature. The potential Proposer must deliver the document to the CN Coordinator specified in CN Section 1.5.1.1. Delivery can be in the form of a CD or email attachment.

The State must be able to edit the delivered document(s). Once the State receives the initial draft of the Proposer Contract, unless the State specifically directs the potential Proposer otherwise, the State will make all changes and additions to the draft Proposer Contract during negotiations. The potential Proposer may submit alternative contractual language in writing during negotiations; however, the State will integrate any accepted language into the Contract,

Failure to submit the initial draft of the Proposer Contract, including any requested Disaster Recovery services related agreement(s), by the deadline will forfeit the potential Proposer's right to negotiate contract terms/contractual language with the State. If the potential Proposer misses the deadline, the potential Proposer must accept the terms and conditions set forth in CN Attachment 6.1, *Pro Forma* Contract without changes or additional attachments. In this case, the CN Attachment 6.1, *Pro Forma* Contract without changes will become CN Attachment 6.8, Proposer Contract for the potential Proposer.

5.2.6 The State will review the initial draft of the Proposer Contract and:

- accept the changes and additions that are acceptable to the State
- reject the changes and additions that are legally unacceptable to the State or contrary to the State's business requirements
- suggest alternative contractual language for negotiation
- submit an updated draft Proposer Contract to the potential Proposer for review

At this point, the potential Proposer may accept the language in the draft Proposer Contract, submit alternative contractual language, and/or schedule verbal negotiations via face-to-face meetings or conference calls. During verbal negotiations, the potential Proposer's negotiation team must be comprised of individuals capable of negotiating in good faith and making commitments on behalf of the potential Proposer.

5.2.7 A negotiation schedule has been developed to allocate the same amount of pre-defined negotiation time to each potential Proposer. If the negotiation schedule is adjusted, under no circumstances will one potential Proposer receive more pre-defined negotiation time than another potential Proposer.

To avoid scheduling conflicts and allow the potential Proposers to plan for verbal negotiations, dates have been assigned to the potential Proposers by random drawing as follows:

- SunGard – Initial Negotiations: February 20, February 21, February 22, and February 23
Final Negotiations: March 5 and March 6
- IBM – Initial Negotiations: February 27, February 28, March 1, and March 2
Final Negotiations: March 8 and March 9

All face-to-face meetings and conference calls will be scheduled during State business hours (8:00 a.m. to 4:30 p.m. Central Time). Face-to-face meetings will be held at State facilities.

5.3 Evaluation Process

The proposal evaluation process is designed to award the contract not necessarily to the Proposer of least cost, but rather to the Proposer with the best combination of attributes based upon the evaluation criteria.

5.3.1 The CN Coordinator will use the CN Attachment 6.3, Technical Proposal and Evaluation Guide to manage the Technical Proposal Evaluation and maintain evaluation records.

5.3.1.1 The CN Coordinator will review each Technical Proposal to determine compliance with mandatory requirements (refer to CN Attachment 6.3, Technical Proposal and Evaluation Guide, Technical Proposal Section A). If the CN Coordinator determines that a proposal may have failed to meet one or

more of the mandatory requirements, the Proposal Evaluation Team will review the proposal and document its determination of whether: (1) the proposal meets requirements for further evaluation; (2) the State will request clarifications or corrections; or, (3) the State will determine the proposal non-responsive to the CN and reject it.

- 5.3.1.2 A Proposal Evaluation Team, made up of three or more State employees, will evaluate each Technical Proposal that appears responsive to the CN.
- 5.3.1.3 Each Proposal Evaluation Team member will independently, evaluate each proposal against the evaluation criteria in this CN, rather than against other proposals, and will score each in accordance with the CN Attachment 6.3, Technical Proposal and Evaluation Guide.
- 5.3.1.4 The State reserves the right, at its sole discretion, to request Proposer clarification of a Technical Proposal or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion shall be limited to specific sections of the proposal identified by the State. The subject Proposer shall put any resulting clarification in writing as may be required by the State.
- 5.3.2 After Technical Proposal evaluations are completed, the CN Coordinator will open the Cost Proposals and use the CN Attachment 6.4, Cost Proposal and Evaluation Guide to calculate and document the Cost Proposal scores.
- 5.3.3 For each responsive proposal, the CN Coordinator will add the average Technical Proposal score to the Cost Proposal score (refer to CN Attachment 6.5, Proposal Score Summary Matrix).

5.4 Contract Award Process

- 5.4.1 The CN Coordinator will forward the results of the proposal evaluation process to the head of the procuring agency who will consider the proposal evaluation process results and all pertinent information available to make a determination about the contract award. The State reserves the right to make an award without further discussion of any proposal.

Notwithstanding the foregoing, to effect a contract award to a Proposer other than the one receiving the highest evaluation score, the head of the procuring agency must provide written justification for such an award and obtain the written approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury.

- 5.4.2 After the agency head's determination, the State will issue an Evaluation Notice to identify the apparent best-evaluated proposal on the Evaluation Notice date detailed in the CN Section 2, Schedule of Events.

NOTICE: The Evaluation Notice shall not create rights, interests, or claims of entitlement in either the Proposer with apparent best-evaluated proposal or any other Proposer.

- 5.4.3 The State will also make the CN files available for public inspection on the Evaluation Notice date detailed in the CN Section 2, Schedule of Events.
- 5.4.4 The Proposer with the apparent best-evaluated proposal must agree to and sign a contract with the State which shall be the same as the CN Attachment 6.8, Proposer Contract. If the Proposer refuses to sign the previously agreed-to contract, the State will immediately determine that the Proposer is non-responsive to the terms of this CN and reject the proposal.
- 5.4.5 The Proposer with the apparent best-evaluated proposal must sign and return the contract drawn by the State pursuant to this CN no later than the Contract Signature Deadline date detailed in the CN Section 2, Schedule of Events. If the Proposer fails to provide the signed contract by the deadline, the State may determine that the Proposer is non-responsive to the terms of this CN and reject the proposal.

- 5.4.6 If the State determines that the apparent best-evaluated proposal is non-responsive and rejects the proposal after opening Cost Proposals, the CN Coordinator will re-calculate scores for each responsive Cost Proposal to determine the new, apparent best-evaluated proposal.

ATTACHMENT 6.1**PRO FORMA CONTRACT**

The *pro forma* contract detailed in this attachment contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from this CN.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
[CONTRACTOR NAME]**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the “State” and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the “Contractor,” is for the provision of Disaster Recovery services, as further defined in the “SCOPE OF SERVICES.”

The Contractor is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]. The Contractor’s address is:

[ADDRESS]

The Contractor’s place of incorporation or organization is [STATE OF ORGANIZATION].

A. SCOPE OF SERVICES:

- A.1. The Contractor is to provide the State with Disaster Recovery services as set forth in this Scope of Services and the State’s Competitive Negotiation RFS# 317.03-162-07 (hereinafter referred to as the “CN”), issued on January 12, 2007, which is incorporated and made part of this Contract.

Disaster Recovery Requirements. The Contractor shall manage the Disaster Recovery services and deliver in accordance with requirements stated in the following Contract Attachments:

Attachment A: Mainframe Requirements
Attachment B: TennCare Equipment Requirements
Attachment C: Enterprise Windows/Linux Requirements
Attachment D: Enterprise UNIX Requirements
Attachment E: Print/Mail Requirements
Attachment F: Unit Rates

- A.2. The Contractor shall make available a Recovery Center and Cold Site of adequate size for the State that will provide an effective means of minimizing the potential impact of a major Disaster affecting the State’s Central Processing Facility and its communications network. A Disaster is a natural or man-made event that renders the State’s Central Processing Facility, its equipment, and/or communications network unusable.
- A.3. The Contractor shall provide services for two types of Disaster Declarations - Infrastructure Disaster Declaration and Print-Only Disaster Declaration. The State will declare an Infrastructure Disaster Declaration by Environment(s) when service delivery capabilities for the Environment(s) are interrupted. This may include, but will not be limited to, Print/Mail Services for the declared Environment(s). The State will declare a Print-Only Disaster Declaration when printing capabilities alone are interrupted and only the services included in the Mail/Print Services Environment are required.

The Contractor shall provide the computer configurations or equivalent equipment specified in Attachments A through E at a Contractor Recovery Center for a period of up to forty-two (42) consecutive

days following an Infrastructure Disaster Declaration by the State. The Contractor will provide and maintain a minimum of three (3) Recovery Centers from which such configuration may be provided.

However, once a Disaster is declared and the State is operating from a Recovery Center, the Contractor shall not move the State's operations to another Recovery Center without prior written approval from the State.

The Contractor shall provide the necessary facilities and equipment to support the Print/Mail Environment specified in Attachment E at a Contractor Recovery Center for a period of up to three hundred sixty-five (365) consecutive days following a Print-Only Disaster Declaration by the State. The Contractor will provide and maintain a minimum of one (1) Recovery Center from which Print/Mail Services may be provided.

Attachments A through E describe the projected configuration specifications. The State will provide the Contractor written notice for configuration changes. The Contractor shall have one month, upon receiving this written notice, to address the configuration change. Attachments A through E reflect the State's actual configuration and are subject to revisions based on configuration changes.

At least two (2) of the Recovery Centers must be more than fifty (50) miles apart. The State recognizes that equivalent equipment may be substituted to meet the State's requirements as defined. Substitutions must be approved by the State. Contracted equipment must meet minimum specifications. Each Recovery Center must also have a Cold Site available to it.

If after forty-two (42) consecutive days following an Infrastructure Disaster Declaration by the State, the Contractor does not have adequate Cold Site facilities available for the State, the Contractor will allow the State to remain in the Recovery Center at the Cold Site Usage daily rate set forth in Attachment F for up to an additional six (6) consecutive calendar months per Disaster or until adequate Cold Site facilities are available.

- A.4. The Contractor shall provide and maintain Cold Site facilities adequate to support the State's hardware configuration for a period of up to six (6) consecutive calendar months per Disaster. The State shall be responsible for installing equipment at the Cold Site.
- A.5. The Contractor will provide Operating System, Network, Tape Services and Print Services technical support and assistance to the State at the time of a Test or Disaster event to aid recovery operations.

The Contractor will also provide technical assistance to support the State staff in assuring that on-site restoration operations and end of event back-up operations can be implemented in the Contractor's Recovery Center facility. The Contractor shall assume all cost related to testing.
- A.6. The Contractor is not responsible for State employee travel costs related to testing or Disaster Recovery, the State's usage of sensitive communication costs, and transportation of media.
- A.7. The Contractor will make a Recovery Center available to the State twenty-four (24) hours per day, seven (7) days per week in the event of a Disaster. Upon notification by the State of a Disaster, the Contractor shall take immediate action to make the Recovery Center available to the State. Access to the Recovery Center must be available within 24 hours of notification.
- A.8. The State, or designated agents of the State, shall be permitted to conduct on-site inspections of any and all contract-related practices, procedures, equipment, and control systems periodically during the term of the contract provided that:
 - a. The inspection is requested with reasonable advance notice, preferably not less than one month;
 - b. Any such inspection be conducted between the hours of 8:30 AM and 5:00 PM, local time respective to the facility's time zone, Monday through Friday, excluding national holidays and other days when the Contractor's facility is closed for administrative business functions;
 - c. The State's personnel will conduct the inspection or accompany those hired to conduct the inspection; and

- d. Any such inspection shall not include any information the Contractor considers confidential or proprietary, including pricing algorithms and related matters.

The State will work with the Contractor to ensure that such inspections do not unnecessarily interfere with the testing or recovery activities of other entities under contract with the Contractor.

- A.9. The Contractor will provide Tape Handling Staff at the request of the State during Disaster Recovery testing and during a Disaster event.
- A.10. The Contractor will provide 512 Kbps Public Internet access at the request of the State during Disaster Recovery testing and during a Disaster event.
- A.11. The Contractor will provide DS-3 channel connectivity to their network that can be shared between multiple Recovery Centers if necessary.
- A.12. Mainframe Environment. At the State's request, the Contractor will provide services in the following manner:
 - A.12.1. The Contractor will provide eighty (80) hours of Mainframe Environment test time per contract year. The State will conduct two (2) tests per contract year with a minimum of forty (40) contiguous hours for each test. The Contractor shall make additional test time available, in blocks of four (4) consecutive hours, as requested by the State. The State shall schedule test times at least six (6) months, but no more than two (2) years, in advance and shall provide a test plan to the Contractor at least three weeks prior to the test. The Contractor may cancel and reschedule test time if another entity with an established contract for Disaster Recovery services with the Contractor, declares a Disaster.
 - A.12.2. The Contractor must provide a mainframe configuration capable of 1) restoring the State's data and systems as specified in Attachment A, and 2) running the State's operating environment.
 - A.12.3. All State mainframe data stored on Contractor's DASD must be erased and non-retrievable at the conclusion of Disaster testing or Disaster event. Written notification will be given by the State as to when the data is to be erased, i.e., email with confirmation of receipt. The data destruction time will not be part of the contracted test hours for testing.
 - A.12.4. The Contractor must support multiple Mainframe LPARs running z/OS 1.6 and above. The Contractor must provide z-9 CPU architecture.
 - A.12.5. The Contractor will provide remote mainframe console control (Remote IPL and control of systems) from any location selected by the State via dial-up or Internet. Any special remote software (e.g., VPN client) must be provided by the Contractor.
 - A.12.6. The Contractor must provide optional data restoration services for the systems to be performed by Contractor staff during Disaster testing or a Disaster event. This is an optional service and may be accepted or rejected separate and apart from total contract and must be priced as a separate line item. This will be in support of the hardware/software listed in Attachment A.
 - A.12.7. The DASD must be capable of supporting ES800 flash copy commands for normal DASD backup processing.
- A.13. TennCare Environment. At the State's request, the Contractor will provide services in the following manner:
 - A.13.1. The Contractor will provide one-hundred sixty (160) hours of TennCare Environment test time per contract year. The State will conduct two (2) tests per contract year with a minimum of eighty (80) contiguous hours for each test. The Contractor shall make additional test time available, in blocks of four (4) consecutive hours, as requested by the State. The State shall schedule test times at least six (6) months, but no more than two (2) years, in advance and shall provide a test plan to the Contractor at least three weeks prior to the test. The Contractor may cancel and reschedule test time if another entity with an established contract for Disaster Recovery services with the Contractor, declares a Disaster.

- A.13.2. The Contractor must provide a configuration that can be restored using State's contracted hardware and software as specified in Attachment B.
- A.13.3. The Contractor must provide configuration and preloading of operating system to meet system requirements as provided in Attachment B. Necessary licenses and serial numbers will be provided by the State.
- A.13.4. All State data stored on Contractor's DASD must be erased and non-retrievable at the conclusion of Disaster testing or Disaster event. Written notification will be given by the State as to when the data is to be erased, i.e., email with confirmation of receipt. The data destruction time will not be part of the contracted test hours for testing.
- A.13.5. The Contractor must provide remote console connection and support for the systems from any location selected by the State via dial-up or Internet. Any special remote software (e.g., VPN Client) must be provided by the Contractor.
- A.13.6. The Contractor must provide on-site technical support for contracted systems. (e.g., SUN-Solaris, Windows, VMware).
- A.13.7. The Contractor must provide software tool(s) to collect and analyze each system to include OS/configuration, hardware configuration (partitions/volumes, etc). Tools must be non-intrusive to system operation.
- A.13.8. The Contractor must provide optional data restoration services for the systems to be performed by Contractor staff during Disaster testing or a Disaster event. This is an optional service and may be accepted or rejected separate and apart from total contract and must be priced as a separate line item. This will be in support of the hardware/software listed in Attachment B.
- A.13.9. The Contractor must provide optional capability for real time (continuous) data replication and batch data replication with contracted SAN technology. Pricing must be based on Recovery Point Objective (RPO) and monthly storage used.
- A.14. Enterprise Windows/Linux Environment. At the State's request, the Contractor will provide services in the following manner:
 - A.14.1. The Contractor will provide eighty (80) hours of Enterprise Windows/Linux Environment test time per contract year. The State will conduct two (2) tests per contract year with a minimum of forty (40) contiguous hours for each test. The Contractor shall make additional test time available, in blocks of four (4) consecutive hours, as requested by the State. The State shall schedule test times at least six (6) months, but no more than two (2) years, in advance and shall provide a test plan to the Contractor at least three weeks prior to the test. The Contractor may cancel and reschedule test time if another entity with an established contract for Disaster Recovery services with the Contractor, declares a Disaster.
 - A.14.2. The Contractor must provide a configuration that can be restored using State's contracted hardware and software as specified in Attachment C.
 - A.14.3. The Contractor must provide configuration and preloading of operating system to meet system requirements as provided in Attachment C. Necessary licenses and serial numbers will be provided by the State.
 - A.14.4. All State data stored on Contractor's DASD must be erased and non-retrievable at the conclusion of Disaster testing or Disaster event. Written notification will be given by the State as to when the data is to be erased, i.e., email with confirmation of receipt. The data destruction time will not be part of the contracted test hours for testing.
 - A.14.5. The Contractor must provide remote console connection and support for the systems from any location selected by the State via dial-up or Internet. Any special remote software (e.g., VPN Client) must be provided by the Contractor.

- A.14.6. The Contractor must provide on-site technical support for contracted systems. (e.g., Windows, Linux, VMware).
- A.14.7. The Contractor must provide software tool(s) to collect and analyze each system to include OS/configuration, hardware configuration (partitions/volumes, etc). Tools must be non-intrusive to system operation.
- A.14.8. The Contractor must provide optional data restoration services for the systems to be performed by Contractor staff during Disaster testing or a Disaster event. This is an optional service and may be accepted or rejected separate and apart from total contract and must be priced as a separate line item. This will be in support of the hardware/software listed in Attachment C.
- A.14.9. The Contractor must provide optional capability for real time (continuous) data replication and batch data replication with contracted SAN technology. Pricing must be based on Recovery Point Objective (RPO) and monthly storage used.
- A.15. Enterprise UNIX Environment. At the State's request, the Contractor will provide services in the following manner:
 - A.15.1. The Contractor will provide eighty (80) hours of Enterprise UNIX Environment test time per contract year. The State will conduct two (2) tests per contract year with a minimum of forty (40) contiguous hours for each test. The Contractor shall make additional test time available, in blocks of four (4) consecutive hours, as requested by the State. The State shall schedule test times at least six (6) months, but no more than two (2) years, in advance and shall provide a test plan to the Contractor at least three weeks prior to the test. The Contractor may cancel and reschedule test time if another entity with an established contract for Disaster Recovery services with the Contractor, declares a Disaster.
 - A.15.2. The Contractor must provide a configuration that can be restored using State's contracted hardware and software as specified in Attachment D.
 - A.15.3. The Contractor must provide configuration and preloading of operating system to meet system requirements as provided in Attachment D. Necessary licenses and serial numbers will be provided by the State.
 - A.15.4. All State data stored on Contractor's DASD must be erased and non-retrievable at the conclusion of Disaster testing or Disaster event. Written notification will be given by the State as to when the data is to be erased, i.e., email with confirmation of receipt. The data destruction time will not be part of the contracted test hours for testing.
 - A.15.5. The Contractor must provide remote console connection and support for the systems from any location selected by the State via dial-up or Internet. Any special remote software (e.g., VPN Client) must be provided by the Contractor.
 - A.15.6. The Contractor must provide on-site technical support for contracted systems. (e.g., SUN-Solaris, UNIX)
 - A.15.7. The Contractor must provide software tool(s) to collect and analyze each system to include OS/configuration, hardware configuration (partitions/volumes, etc). Tools must be non-intrusive to system operation.
 - A.15.8. The Contractor must provide optional data restoration services for the systems to be performed by Contractor staff during Disaster testing or a Disaster event. This is an optional service and may be accepted or rejected separate and apart from total contract and must be priced as a separate line item. This will be in support of the hardware/software listed in Attachment D.
 - A.15.9. The Contractor must provide optional capability for real time (continuous) data replication and batch data replication with contracted SAN technology. Pricing must be based on Recovery Point Objective (RPO) and monthly storage used.

A.16. Print/Mail Services. At the State's request, the Contractor will provide services in the following manner:

A.16.1. The Contractor will provide thirty-eight (38) hours of Print-only test time per contract year. Print-only test time will be used to test print services separate and apart from the Disaster tests conducted for the Environments specified in Attachments A through D. Print services testing conducted during a Disaster test for a specific Environment will be included in the test time allocated for that Environment. The State will conduct two (2) tests per contract year with a minimum of nineteen (19) contiguous hours for each test. The Contractor shall make additional test time available, in blocks of four (4) consecutive hours, as requested by the State. The State shall schedule test times at least six (6) months, but no more than two (2) years, in advance and shall provide a test plan to the Contractor at least three weeks prior to the test. The Contractor may cancel and reschedule test time if another entity with an established contract for Disaster Recovery services with the Contractor, declares a Disaster.

A.16.2. The Contractor must provide print connectivity that supports the Environments defined in Attachments A through E.

A.16.3. The Contractor will provide Print/Mail Services for both AFP/Metacode and PostScript format. The Contractor will produce laser image MICR/non MICR cut sheet output. The Contractor will produce simplex and duplex laser cut sheet and continuous output. The Contractor will burst, cut and trim continuous output into 8 ½ X 11 sheets. Print and mail volumes are listed in Attachment E.

A.16.4. The Contractor will deliver print as directed by the State via the following methods:

a. During a Disaster:

1. Bulk Shipping: The Contractor will label, package and ship print to an address designated by the State at the time of the Disaster. The Contractor is responsible for providing the labor, equipment and materials required to prepare the print for shipping. The State will pay the shipping company charges directly or reimburse the Contractor for the actual shipping company charges.

2. Postal Mail: The Contractor will fold, insert into envelopes and mail forms/letters to the addressee printed on the form/letter at the time of a Disaster. The Contractor is responsible for providing the labor, equipment and materials required to prepare the forms/letters for mailing. The State will pay the postage directly or reimburse the Contractor for the actual postage charges.

b. During a Test:

1. Bulk Shipping: The State may request the Contractor to ship samples of print or enveloped forms/letters produced during a Test. The Contractor will label, package and ship the samples to the address designated in E.2. The Contractor is responsible for providing the labor, equipment and materials required to prepare the samples for shipping. The State will pay the shipping company charges directly or reimburse the Contractor for the actual shipping company charges.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on **May 1, 2007** and ending on **April 30, 2012**. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Declared Disaster Term Extension. If the State declares a Disaster, the State, at its discretion, may automatically extend the Contract for an additional period or periods of time, not to exceed one (1) year.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **[WRITTEN DOLLAR AMOUNT]** (**\$(NUMBER AMOUNT)**). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates

include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The maximum liability stated above does not include charges for Disaster Declaration Services to be incurred by the State in the event of an actual Disaster. Thus, in the event the State declares a Disaster; the Contract shall be amended to increase the maximum liability to cover Disaster Declaration Services at the rates set forth in Contract Attachment F.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the unit prices detailed in Contract Attachment F.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.3.a. The Unit Rates in Attachment F for MICR checks, simplex/duplex pages, and simplex/duplex continuous forms must include all labor, equipment and materials costs, with the exception of check stock and pre-printed forms, to produce the print. The State will provide check stock and pre-printed forms to the Contractor at no cost to the Contractor. The State will compensate the Contractor for print produced during Disaster testing or a Disaster event at the Unit Rates in Attachment F. No other compensation for print will be paid to the Contractor.
- C.3.b. During the term of the Contract, the State reserves the right to add or delete Resources or Hardware from the Environments listed in Attachments A through E. The Contractor will be notified in writing of changes to the Environments and copy of such dated notice will be filed with the Contract. The Contract will be amended to update Attachments A through E and the Subscription Fee per Month to the then current Resource or Hardware levels only when amendments are required to add or change Unit Rates or to increase the maximum liability.
 - C.3.b.i. For the addition of a Resource or Hardware that is listed in Attachments A through E, the Monthly Unit Rate quoted in Attachment F will apply to the portion of the additional quantity of such Resource or Hardware that is available to the State at its primary Recovery Center. The State's Subscription Fee per Month will be increased by an amount equal to the Monthly Unit Rate for the Resource or Hardware in Attachment F times the additional quantity of the Resource or Hardware.
 - C.3.b.ii. For the deletion of a Resource or Hardware that is listed in Attachments A through E, the Monthly Unit Rate quoted in Attachment F will apply to the portion of the deleted quantity of such Resource or Hardware that is no longer needed by the State at its primary Recovery Center. The State's Subscription Fee per Month will be decreased by an amount equal to the Monthly Unit Rate for the Resource or Hardware in Attachment F times the deleted quantity of the Resource or Hardware.
 - C.3.b.iii. The State may add a Resource or Hardware not listed in Attachments A through E, where such additional Resource or Hardware or equivalent equipment is available at the State's primary Recovery Center to the Contractor's general Business Recovery Services (BRS) subscriber base.

If the State adds a Resource or Hardware not listed in attachments A through E, where such additional Resource or Hardware or equivalent equipment is available at the State's primary Recovery Center to the

Contractor's general Business Recovery Services (BRS) subscriber base, it will be necessary to amend this contract to include an Attachment F Monthly Unit Rate for the additional Resource or Hardware with pricing fixed for the duration of the Contract.

The State's Subscription Fee per Month will be increased by an amount equal to the Monthly Unit Rate for the Resource or Hardware in the amended Attachment F times the quantity of the Resource or Hardware that is required by the State at its primary Recovery Center.

- C.3.b.iv. The State may add a Resource or Hardware not listed in Attachments A through E, where such additional Resource or Hardware or equivalent equipment is not available at the State's primary Recovery Center to the Contractor's general BRS subscriber base (called "Nonstandard Equipment"). In which case, the State acknowledges that the Contractor may need to acquire such additional Resource or Hardware solely for the State. If, in order to support the State's requirements, the Contractor must acquire Nonstandard Equipment, the Contractor will provide the State a description of a) the quantity and type of Nonstandard Equipment acquired and b) the total investment amount incurred by the Contractor to acquire such Nonstandard Equipment. Upon written approval from the State, the Contractor will acquire such Nonstandard Equipment.

If the State adds a Resource or Hardware not listed in attachments A through E, where such additional Resource or Hardware or equivalent "Nonstandard Equipment" that is not available at the State's primary Recovery Center to the Contractor's general Business Recovery Services (BRS) subscriber base, it will be necessary to amend this contract to include an Attachment F Monthly Unit Rate for the additional Resource or Hardware with pricing fixed for the duration of the Contract. Said Monthly Unit Rate will be computed by dividing the Contractor's investment amount by the number of whole months between the date such Nonstandard Equipment is acquired and October 31, 2011.

The State's Subscription Fee per Month will be increased by an amount equal to the Monthly Unit Rate for the Nonstandard Equipment in the amended Attachment F times the quantity of the Nonstandard Equipment required by the State at its primary Recovery Center.

- C.3.b.v. The Unit Rates for the following Optional Services and Disaster Declaration Services may be increased or decreased when Resources or Hardware are added or deleted. To initiate the Unit Rate increases, the Contractor must provide the reasons for the increase to the State in writing. It will be necessary to amend this contract to effect such adjusted Unit Rates.

Optional Services

Additional Testing Time Per 4-Hour Block (for Attachments A through E)

Contractor Data Restoration Services Per Month (for Attachments A through D)

Disaster Declaration Services

Recovery Center Usage Per Day (for Attachments A through E)

Cold Site Usage Per Day (for Attachments A through D)

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State, which will not be unreasonably withheld. If sub-contractor approval is requested at least fifteen (15) calendar days in advance of service delivery, the Contractor will not be held responsible for delays in providing services that are due to obtaining the State's prior written approval for sub-contractors. If sub-contractor approval is requested at the time of a Disaster Declaration, State approval will be expedited as necessary to avoid service delays.
- If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply

goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Contract Attachment H, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- D.9. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or

direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- E. SPECIAL TERMS AND CONDITIONS:
 - E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
 - E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Mark B. Hancock
Information System Consultant
Mark.Hancock@state.tn.us
615-741-1422

Larry K. Peck
Information System Consultant
Larry.K.Peck@state.tn.us
615-532-0920

Office for Information Resources
 901 5th Ave N.
 Nashville, TN 37219
 FAX 615-741-7341

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]
 [CONTRACTOR NAME]
 [ADDRESS]
 [TELEPHONE NUMBER]
 [FACSIMILE NUMBER]

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken

- (3) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.5. **Partial Takeover**. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.6. **Limitation of Liability**. The parties agree that the total liability of the Contractor for breach of this Contract shall not exceed two (2) times the value of this contract. The value shall be established by the Contract Maximum Liability in Section C.1 and increased by subsequent amendments if any. The foregoing provision shall not limit the contractor's liability for intentional torts, criminal acts or fraudulent conduct.
- E.7. **Incorporation of Additional Documents**. Included in this Contract by reference are the following documents:
- a. The Contract document
 - b. The Contract attachments
 - c. All Clarifications and addenda made to the Contractor's Proposal
 - d. The Competitive Negotiation and its associated amendments
 - e. Technical Specifications provided to the Contractor

f. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.9. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.10. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.11. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of

the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

- E.12. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.13. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to **Tennessee Code Annotated**, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

- E.14. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- E.15. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.

- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.16. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFS-317.03-162-07 (Attachment 6.3, Section B, Item B.13.) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Business Diversity Enterprise in form and substance as required by said office.

IN WITNESS WHEREOF:

CONTRACTOR LEGAL ENTITY NAME:

NAME AND TITLE

Date

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

CONTRACT ATTACHMENT A**MAINFRAME REQUIREMENTS****Attachment A – Mainframe**

Resource	Year 1	Year 2	Year 3	Year 4	Year 5
Gartner MIP	2000	2000	2000	2000	2000
1 GB Main Storage	32	32	32	32	32
1 GB DASD Useable formatted – NOT RAW SPACE	14000	14000	14000	14000	14000
Open Systems Adapter (OSA)	3	3	3	3	3
4000 Mod 1 Printer	1	1	1	1	1
3490 Tape Drive	40	40	40	40	40
3590 Tape Drive (Mod E11)	32	32	40	40	40
3174 Mod 11L Local Terminal Control Unit	1	1	1	1	1
3194 Mod 5 Operator Console	8	8	8	8	8
3745-x1A (16MB, 10 CA, 4 high speed scanners, 64 LIC1, 64 LIC3, 5 56Kb ports)	1	1	1	1	1
3746/900 (2 ESCON, 2 TR TIC3, 4 LIC11 (12 V.24, 3 V.35)	1	1	1	1	1
19.2 Kb Circuits (Dial-up)	10	10	10	10	10
3287/002 Printer	1	1	1	1	1
DRS Circuit/ DS-3 access	1	1	1	1	1
DRS Circuit/ T1.5 Mb Access Link	4	5	5	6	6

CONTRACT ATTACHMENT B**TENNCARE EQUIPMENT REQUIREMENTS****Attachment B - TennCare Equipment**

Hardware	Year 1	Year 2	Year 3	Year 4	Year 5	Per Server Resources
Citrix Terminal #1, #2, #3, #4, and #5						
HP-Compaq DL580	5	5	5	5	5	Number of server(s)
Memory (GB)	10	10	10	10	10	2 GB RAM each server
2.0 GHz Processor	10	10	10	10	10	2 processors each server
Disk Capacity (per GB)	1465	1465	1465	1465	1465	293 GB each server
InterChange Internet and Intranet Web Server						
HP-Compaq DL580	1	1	1	1	1	Number of server(s)
Memory (GB)	2	2	2	2	2	2 GB RAM each server
2.0 GHz Processor	2	2	2	2	2	2 processors each server
Disk Capacity (per GB)	293	293	293	293	293	293 GB each server
FileNet App Server						
HP-Compaq DL580	1	1	1	1	1	Number of server(s)
Memory (GB)	2	2	2	2	2	2 GB RAM each server
2.0 GHz Processor	2	2	2	2	2	2 processors each server
Disk Capacity (per GB)	293	293	293	293	293	293 GB each server
FileNet Inbound Document Linker Service						
HP-Compaq DL580	1	1	1	1	1	Number of server(s)
Memory (GB)	2	2	2	2	2	2 GB RAM each server
2.0 GHz Processor	2	2	2	2	2	2 processors each server
Disk Capacity (per GB)	293	293	293	293	293	293 GB each server
FileNet Renderer Services						
HP-Compaq DL580	1	1	1	1	1	Number of server(s)
Memory (GB)	2	2	2	2	2	2 GB RAM each server
2.0 GHz Processor	2	2	2	2	2	2 processors each server
Disk Capacity (per GB)	293	293	293	293	293	293 GB each server
FTP Server						
HP-Compaq DL580	1	1	1	1	1	Number of server(s)

Memory (GB)	2	2	2	2	2	2 GB RAM each server
2.0 GHz Processor	2	2	2	2	2	2 processors each server
Disk Capacity (per GB)	293	293	293	293	293	293 GB each server
Interchange Online Server						Note: The Sun servers from here to the bottom are listed individually. The resources are for the specified server.
SunFire 4900	1	1	1	1	1	
Memory (GB)	24	24	24	24	24	
1.35 GHz Dual Core Ultraspark 4 (24 cores) Processor	12	12	12	12	12	
Disk Capacity (per GB) SAN (usable formatted space with RAID 5 configuration - NOT RAW SPACE)	12288	12288	12288	12288	12288	
SCSI Adapter	2	2	2	2	2	
Quad Fast Ethernet Card	1	1	1	1	1	
Gbit 1x1000BaseT	1	1	1	1	1	
LP9002L Fiber Adapter	1	1	1	1	1	
6560 Fiber Adapter	4	4	4	4	4	
L700 Tape Library	1	1	1	1	1	
LTO-2 Tape Drives	12	12	12	12	12	
Siebel DB Server						
SunFire V880	1	1	1	1	1	
Memory (GB)	8	8	8	8	8	
1.2Ghz Processor	4	4	4	4	4	
Disk Capacity (per GB)	144	144	144	144	144	
Quad Fast Ethernet Card	1	1	1	1	1	
Gbit 1x100BaseT	1	1	1	1	1	
LP9002L Fiber Adapter	1	1	1	1	1	
FileNet DB Server						
SunFire 280R	1	1	1	1	1	
Memory (GB)	1	1	1	1	1	
1.2Ghz Processor	2	2	2	2	2	
Disk Capacity (per GB)	144	144	144	144	144	
LP9002L Fiber Adapter	1	1	1	1	1	
10/100BaseT	1	1	1	1	1	
FileNet Application Server						
SunFire 280R	1	1	1	1	1	
Memory (GB)	1	1	1	1	1	
1.2Ghz Processor	2	2	2	2	2	
Disk Capacity (per GB)	144	144	144	144	144	
LP9002L Fiber Adapter	1	1	1	1	1	
10/100BaseT	1	1	1	1	1	
SUN 2 (also the Legato Tape Server)						

SunFire 4900	1	1	1	1	1	
Memory (GB)	16	16	16	16	16	
1.35 GHz Dual Core Ultraspark 4 (16 cores) Processor	8	8	8	8	8	
Disk Capacity (per GB)	144	144	144	144	144	
Gbit 1x100BaseT	2	2	2	2	2	
10/100BaseT	2	2	2	2	2	
LP9002L Fiber Adapter	1	1	1	1	1	
SUN 0						
SunFire 4800	1	1	1	1	1	
Memory (GB)	16	16	16	16	16	
1.2 GHz Processor	8	8	8	8	8	
Disk Capacity (per GB)	144	144	144	144	144	
Gbit 1x100BaseT	2	2	2	2	2	
10/100BaseT	2	2	2	2	2	
LP9002L Fiber Adapter	1	1	1	1	1	

CONTRACT ATTACHMENT C**ENTERPRISE WINDOWS/LINUX REQUIREMENTS****Attachment C - Enterprise Windows/ Linux**

Hardware	Year 1	Year 2	Year 3	Year 4	Year 5	Per Server Resources
Windows FTP Server						
HP DL380 G4	1	1	1	1	1	Stand alone server
3.6 GHz Processor	2	2	2	2	2	2 processors each server
GB Memory	2.5	2.5	2.5	2.5	2.5	2.5 GB RAM each server
36GB Local Hard Disk Space	4	4	4	4	4	4 drives each server
1 Dual Port HBA for SAN Connectivity	1	1	1	1	1	1 HBA each server
SAN Storage (in GB) - (usable formatted space with RAID 5 configuration - NOT RAW SPACE)	150	150	150	150	150	Total 150 GB on SAN for server
VMware Server Farm						
HP DL580 G3	8	8	8	8	8	Number of servers in farm
3.33GHz Xeon Processor	32	32	32	32	32	4 processors each server
GB Memory	256	256	256	256	256	32 GB RAM each server
72GB 15K RPM Local Hard Disks	16	16	16	16	16	2 drives each server
Single Port HBAs for SAN Connectivity	16	16	16	16	16	2 HBAs each server
1 Gigabit Dual Port NIC Cards	16	16	16	16	16	2 cards each server
Internal Dual Port Gigabit NIC Ports	8	8	8	8	8	1 internal dual port each server
SAN Storage (in GB) allocated in 200 GB Blocks - (usable formatted space with RAID 5 configuration - NOT RAW SPACE)	1000	1000	1000	1000	1000	Total 1000 GB on SAN for server farm
Citrix Published Desktop Server Farm						
HP DL380 G4	15	15	15	15	15	Number of servers in farm
3.6 GHz Xeon Processor	30	30	30	30	30	2 processors each server
GB Memory	37.5	37.5	37.5	37.5	37.5	2.5 GB RAM each server
36GB Local Hard Disk Space	60	60	60	60	60	4 drives each server
Citrix TennCare Application Servers						
HP DL380 G4	15	15	15	15	15	Number of servers in farm
3.6 GHz Xeon Processor	30	30	30	30	30	2 processors each server
GB Memory	37.5	37.5	37.5	37.5	37.5	2.5 GB RAM each server

36GB Local Hard Disk Space	60	60	60	60	60	4 drives each server
Windows Shared Database Cluster						
HP DL380 G4	2	2	2	2	2	Number of servers in farm
2.4 GHz Processor	4	4	4	4	4	2 processors each server
GB Memory	8	8	8	8	8	4 GB RAM each server
36GB Local Hard Disk Space	8	8	8	8	8	4 drives each server
SAN Storage (in GB) allocated in 200 GB Blocks - (usable formatted space with RAID 5 configuration - NOT RAW SPACE)	400	400	400	400	400	200 GB SAN each server
Windows Shared Intranet WEB						
HP DL380 G4	1	1	1	1	1	Stand alone server
3.6 GHz Xeon Processor	2	2	2	2	2	2 processors each server
GB Memory	2.5	2.5	2.5	2.5	2.5	2.5 GB RAM each server
18.2 GB Local Hard Disk Space	3	3	3	3	3	3 drives each server
Windows Shared Internet WEB						
HP DL380 G4	1	1	1	1	1	Stand alone server
3.6 GHz Xeon Processor	2	2	2	2	2	2 processors each server
GB Memory	2.5	2.5	2.5	2.5	2.5	2.5 GB RAM each server
18.2 GB Local Hard Disk Space	3	3	3	3	3	3 drives each server
Windows Shared Internet .NET WEB						
HP DL380 G4	1	1	1	1	1	Stand alone server
3.6 GHz Xeon Processor	2	2	2	2	2	2 processors each server
GB Memory	2.5	2.5	2.5	2.5	2.5	2.5 GB RAM each server
36GB Local Hard Disk Space	4	4	4	4	4	4 drives each server
Windows Shared Intranet .NET WEB						
HP DL380 G4	2	2	2	2	2	Number of servers in farm
3.6 GHz Xeon Processor	4	4	4	4	4	2 processors each server
GB Memory	5	5	5	5	5	2.5 GB RAM each server
36GB Local Hard Disk Space	8	8	8	8	8	4 drives each server

CONTRACT ATTACHMENT D

ENTERPRISE UNIX REQUIREMENTS

Attachment D - Enterprise UNIX

Hardware	Operating System	Year 1	Year 2	Year 3	Year 4	Year 5	Per Server Resources
Secure FTP Server							
SUN T2000	Solaris 10	2	2	2	2	2	Number of server(s)
1.0 GHz Processor		1	1	1	1	1	1 processor each server
GB Memory		8	8	8	8	8	8 GB RAM each server
SAN Storage (in GB) - (usable formatted space with RAID 5 configuration - NOT RAW SPACE)		600	600	600	600	600	Total 600 GB on SAN for server
Sun Internet WEB Server							
SUN V440	Solaris 9	2	2	2	2	2	Number of server(s)
1.28 GHz Processor		8	8	8	8	8	4 processors each server
GB Memory		32	32	32	32	32	16 GB RAM each server
72 GB Local Hard Disk Space		8	8	8	8	8	4 drives each server
SAN Storage (in GB) - (usable formatted space with RAID 5 configuration - NOT RAW SPACE)		200	200	200	200	200	Total 600 GB on SAN for all servers
Sun Intranet WEB Server							
SUN V420	Solaris 9	2	2	2	2	2	Number of server(s)
450 MHz Processor		4	4	4	4	4	2 processors each server
GB Memory		8	8	8	8	8	4 GB RAM each server
36 GB Local Hard Disk Space		4	4	4	4	4	2 drives each server
SAN Storage (in GB) - (usable formatted space with RAID 5 configuration - NOT RAW SPACE)		40	40	40	40	40	Total 40 GB on SAN for all servers
Sun Shared Database Server							
SUN 1280	Solaris 9	1	1	1	1	1	Number of server(s)
900 MHz Processor		4	4	4	4	4	4 processors each server
GB Memory		8	8	8	8	8	8 GB RAM each server
36 GB Local Hard Disk Space		2	2	2	2	2	2 drives each server
SAN Storage (in GB) - (usable formatted space with RAID 5 configuration - NOT RAW SPACE)		250	250	250	250	250	Total 250 GB on SAN for server
Sun Shared Application							

Server							
SUN V880	Solaris 9	4	4	4	4	4	Number of server(s)
1.2 GHz Processor		16	16	16	16	16	4 processors each server
GB Memory		32	32	32	32	32	8 GB RAM each server
72 GB Local Hard Disk Space		24	24	24	24	24	6 drives each server
Sun Shared Application Server							
SUN V240	Solaris 9	1	1	1	1	1	Number of server(s)
1.0 GHz Processor		2	2	2	2	2	2 processors each server
GB Memory		2	2	2	2	2	2 GB RAM each server
72 GB Local Hard Disk Space		4	4	4	4	4	4 drives each server

CONTRACT ATTACHMENT E**PRINT / MAIL REQUIREMENTS****EQUIPMENT QUOTATION FORM
(PROJECTED CONFIGURATION)****Attachment E - Print/Mail Services**

	Year 1 Monthly Estimates	Year 2 Monthly Estimates	Year 3 Monthly Estimates	Year 4 Monthly Estimates	Year 5 Monthly Estimates
Print Volumes These are the estimated print volumes per month.					
MICR Checks 8 ½" X 11"	645,000	645,000	645,000	645,000	645,000
Simplex and Duplex Pages 8 ½" X 11" cut sheet with less than 1% 8 ½" X 14" cut sheet	4,322,000	4,322,000	4,322,000	4,322,000	4,322,000
Simplex and Duplex Continuous Forms in 1-up and 2-up Configurations	5,987,000	5,987,000	5,987,000	5,987,000	5,987,000
Mail Volumes This is an estimated subset of the Print Volumes above that are folded and inserted into envelopes for mailing each month. It is not an additional number of items to be printed.					
Simplex and Duplex Pages 8 ½" X 11" cut sheet or bursted	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000

CONTRACT ATTACHMENT F

UNIT RATES

[PRIOR TO CONTRACT SIGNING, THE COST PROPOSAL RATES FROM ATTACHMENT 6.4 SHALL BE INSERTED HERE.]

Environment Costs

This table shows the services cost for the Environments specified in Contract Attachments A through E.

Subscription Fee Per Month is the monthly rate to provide Disaster Recovery Facilities and Testing for the specified Environment.

Optional Services are services that may be requested by the State during a Test or Disaster.

Disaster Declaration Services are services that may be requested by the State during a Disaster.

Contract Attachment A - Mainframe Configuration	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4	Rate Year 5
Monthly Services					
Subscription Fee Per Month					
Optional Services					
Additional Testing Time Per 4-Hour Block					
Tape Handling Services Per Hour Per Staff Member					
Data Destructions Per GB of Data on Contracted DASD					
512 Kbps Public Internet Access During Disaster Recovery Activities					
Contractor Data Restoration Services Per Month					
Disaster Declaration Services					
Declaration Fee Per Incident					
Alert Fee Per Incident					
Recovery Center Usage Per Day					
Cold Site Usage Per Day					
Contract Attachment B - TennCare Equipment	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4	Rate Year 5
Monthly Services					
Subscription Fee Per Month					
Optional Services					
Additional Testing Time Per 4-Hour Block					
Tape Handling Services Per Hour Per Staff Member					
Data Destructions Per GB of Data on Contracted DASD					
512 Kbps Public Internet Access During Disaster Recovery Activities					
Hardware Analysis Tool(s) Usage Per Month					
Contractor Data Restoration Services Per Month					
Continuous Data Replication (RPO < = 5 minutes) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 10 minutes) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 30 minutes) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 1 hour) for SAN Technology Per GB Per Month					

Batch Data Replication (RPO = 2 hours) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 4 hours) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 8 hours) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 24 hours) for SAN Technology Per GB Per Month					
Disaster Declaration Services					
Declaration Fee Per Incident					
Alert Fee Per Incident					
Recovery Center Usage Per Day					
Cold Site Usage Per Day					
Contract Attachment C - Enterprise Windows/Linux	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4	Rate Year 5
Monthly Services					
Subscription Fee Per Month					
Optional Services					
Additional Testing Time Per 4-Hour Block					
Tape Handling Services Per Hour Per Staff Member					
Data Destructions Per GB of Data on Contracted DASD					
512 Kbps Public Internet Access During Disaster Recovery Activities					
Hardware Analysis Tool(s) Usage Per Month					
Contractor Data Restoration Services Per Month					
Continuous Data Replication (RPO < = 5 minutes) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 10 minutes) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 30 minutes) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 1 hour) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 2 hours) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 4 hours) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 8 hours) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 24 hours) for SAN Technology Per GB Per Month					
Disaster Declaration Services					
Declaration Fee Per Incident					
Alert Fee Per Incident					
Recovery Center Usage Per Day					
Cold Site Usage Per Day					
Contract Attachment D - Enterprise UNIX	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4	Rate Year 5
Monthly Services					
Subscription Fee Per Month					
Optional Services					
Additional Testing Time Per 4-Hour Block					

Tape Handling Services Per Hour Per Staff Member					
Data Destructions Per GB of Data on Contracted DASD					
512 Kbps Public Internet Access During Disaster Recovery Activities					
Hardware Analysis Tool(s) Usage Per Month					
Contractor Data Restoration Services Per Month					
Continuous Data Replication (RPO < = 5 minutes) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 10 minutes) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 30 minutes) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 1 hour) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 2 hours) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 4 hours) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 8 hours) for SAN Technology Per GB Per Month					
Batch Data Replication (RPO = 24 hours) for SAN Technology Per GB Per Month					
Disaster Declaration Services					
Declaration Fee Per Incident					
Alert Fee Per Incident					
Recovery Center Usage per Day					
Cold Site Usage Per Day					
Contract Attachment E - Print/Mail Services	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4	Rate Year 5
Monthly Services					
Subscription Fee Per Month					
Optional Services					
Additional Testing Time Per 4-Hour Block					
Print MICR Checks 8 ½" X 11" Per 1000					
Print Simplex/Duplex Pages Per Per 1000					
Print Continuous Forms Simplex/Duplex Per Per 1000					
Fold, Insert, and Prepare to Mail Forms/Letters Per 1000 Envelopes					
Label, Package and Prepare to Ship Print Per 1000 Print Items (items include pages, forms, and envelopes)					
Disaster Declaration Services					
Print-Only Declaration Fee Per Incident					
Print-Only Alert Fee Per Incident					
Print-Only Recovery Center Usage per Day					

Component Costs

This table shows the increase/decrease to the Subscription Fee Per Month to add/delete components in the Environments specified in Contract Attachments A through E.

Standard Configuration and Additional Components are priced for the indicated server type. Standard Configuration denotes the minimum server configuration required by the State. Additional Components denote the components that may be added to the server to upgrade the components beyond the Standard Configuration.

Note: All rates are per month.

Mainframe Components	Monthly Rate Year 1	Monthly Rate Year 2	Monthly Rate Year 3	Monthly Rate Year 4	Monthly Rate Year 5
50 Gartner MIP					
2 GB Main Storage					
100 GB DASD Useable formatted – NOT RAW SPACE					
1 Open Systems Adapter (OSA)					
1 4000 Mod 1 Printer					
1 3490 Tape Drive					
1 3590 Tape Drive (Mod E11)					
1 3174 Mod 11L Local Terminal Control Unit					
1 3194 Mod 5 Operator Console					
1 3745-x1A (16MB, 10 CA, 4 high speed scanners, 64 LIC1, 64 LIC3, 5 56Kb ports)					
1 3746/900 (2 ESCON, 2 TR TIC3, 4 LIC11 (12 V.24, 3 V.35))					
1 19.2 Kb Circuits (Dial-up)					
1 3287/002 Printer					
1 DRS Circuit/ DS-3 access					
1 DRS Circuit/ T1.5 Mb Access Link					
UNIX Components	Monthly Rate Year 1	Monthly Rate Year 2	Monthly Rate Year 3	Monthly Rate Year 4	Monthly Rate Year 5
Standard SUN V240 Configuration					
1 SUN V240					
2 1.5GHz Processors					
4 GB Memory					
2 73 GB Local Hard Disk Space					
1 LP9002L Fiber Adapter					
Additional SUN V240 Components					
1 1.5GHz Processor					
1 GB Memory					
1 GB Local Hard Disk Space					
1 10/100BaseT					
Standard SUN V440 Configuration					
1 SUN V440					

4 1.593GHz Processor					
16 GB Memory					
4 73 GB Local Hard Disk Space					
1 LP9002L Fiber Adapter					
Additional SUN V440 Components					
1 Processor					
1 GB Memory					
1 GB Local Hard Disk Space					
Standard Sunfire V890 Configuration					
1 SunFire V890					
4 1.5GHz Processor					
16 GB Memory					
4 146 GB Local Hard Disk Space					
1 LP9002L Fiber Adapter					
Additional Sunfire V890 Components					
1 1.5Ghz Processor					
1 GB Memory					
1 GB Local Hard Disk Space					
1 Quad Fast Ethernet Card					
1 Gbit 1x100BaseT					
1 LP9002L Fiber Adapter					
Standard SUN 1280 Configuration					
1 SUN 1280					
4 1.5GHz Processor					
12 GB Memory					
2 36 GB Local Hard Disk Space					
1 LP9002L Fiber Adapter					
Additional SUN 1280 Components					
1 1.5GHz Processor					
1 GB Memory					
1 GB Local Hard Disk Space					
Standard SUN T2000 Configuration					
1 SUN T2000					
1 1GHz Processor					
8 GB Memory					
2 73 GB Local Hard Disk Space					
1 LP9002L Fiber Adapter					
Additional SUN T2000 Components					
1 1GHz Processor					
1 GB Memory					
Standard SUN 4900 Configuration					
1 SunFire 4900					
4 1.35GHz Dual Core Ultraspark 4 Processor					
16 GB Memory					
2 73 GB Local Hard Disk Space					
1 LP9002L Fiber Adapter					
Additional SUN 4900 Components					
1 1.35GHz Dual Core Ultraspark 4 Processor					
1 GB Memory					
1 GB Local Hard Disk Space					
1 SCSI Adapter					

1 Quad Fast Ethernet Card					
1 Gbit 1x100BaseT					
1 Gbit 1x1000BaseT					
1 10/100BaseT					
1 LP9002L Fiber Adapter					
1 6560 Fiber Adapter					
1 L700 Tape Library					
1 LTO-2 Tape Drives					
Windows/Linux Components	Monthly Rate Year 1	Monthly Rate Year 2	Monthly Rate Year 3	Monthly Rate Year 4	Monthly Rate Year 5
Standard HP DL380 G4 Configuration					
HP DL380 G4					
2 3.6Ghz Xeon processors					
2 GB Memory					
4 72 GB Ultra320 SCSI hard drives (RAID 5)					
Additional HP DL380 G4 Components					
1 GB Memory					
1 72 GB Ultra320 SCSI hard drives (RAID 5)					
1 146 GB Ultra320 SCSI hard drives (RAID 5)					
1 Dual Port HBA for SAN Connectivity					
Standard HP DL580 G3 Configuration					
HP DL580 G3					
4 3.33Ghz Xeon processors					
4 GB PC2-3200 ECC Memory					
4 72 GB Ultra320 SCSI hard drive					
Additional HP DL580 G3 Components					
1 GB PC2-3200 ECC Memory					
1 GB Local Hard Disk Space					
1 146 GB Ultra320 SCSI hard drive					
1 72GB 15K RPM Local Hard Disks					
1 Single Port HBA for SAN Connectivity					
1 Gigabit Network Connection (2 Onboard + 2 dual port NIC Cards)					
Standard Dell PowerEdge 2850 Configuration					
Dell PowerEdge 2850					
2 3.6Ghz Xeon processors					
2 GB Memory					
4 72 GB Ultra320 SCSI hard drives (RAID 5)					
Additional Dell PowerEdge 2850 Components					
1 GB Memory					
1 72 GB Ultra320 SCSI hard drives (RAID 5)					
1 146 GB Ultra320 SCSI hard drives (RAID 5)					
1 Dual Port HBA for SAN Connectivity					
Standard Dell PowerEdge 6850 Configuration					
Dell PowerEdge 6850					
4 3.33Ghz Xeon processors					
4 GB PC2-3200 ECC Memory					
4 72 GB Ultra320 SCSI hard drive					
Additional Dell PowerEdge 6850 Components					

1 GB PC2-3200 ECC Memory					
1 GB Local Hard Disk Space					
1 146 GB Ultra320 SCSI hard drive					
1 72GB 15K RPM Local Hard Disks					
1 Single Port HBA for SAN Connectivity					
1 Gigabit Network Connection (2 Onboard + 2 dual port NIC Cards)					
UNIX/Windows/Linux SAN Storage	Monthly Rate Year 1	Monthly Rate Year 2	Monthly Rate Year 3	Monthly Rate Year 4	Monthly Rate Year 5
10 GB Storage on SAN (usable formatted space with RAID 5 configuration - NOT RAW SPACE)					
Print/Mail Services Components	Monthly Rate Year 1	Monthly Rate Year 2	Monthly Rate Year 3	Monthly Rate Year 4	Monthly Rate Year 5
MICR Checks 8 ½" X 11" Per 1000					
Simplex/Duplex Pages Per Per 1000					
Continuous Forms Simplex/Duplex Per Per 1000					

CONTRACT ATTACHMENT G***ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE***

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

**SIGNATURE &
DATE:**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

ATTACHMENT 6.2**PROPOSAL TRANSMITTAL AND STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Proposer must complete and sign this Technical Proposal Transmittal. It must be signed, in the space below, by an individual empowered to bind the proposing entity to the provisions of this CN and any contract awarded pursuant to it. If said individual is not the Proposer's chief executive, president, vice-president, or partner, this document shall attach evidence showing the individual's authority to bind the proposing entity.

PROPOSER LEGAL ENTITY NAME:	
------------------------------------	--

PROPOSER FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	
--	--

The Proposer does hereby affirm and expressly declare confirmation, certification, and assurance of the following:

- 1) This proposal constitutes a commitment to provide all services as defined in the CN Attachment 6.8, Proposer Contract Scope of Services for the total contract period and confirmation that the Proposer shall comply with all of the provisions in this CN and shall accept all terms and conditions set out in the CN Attachment 6.8, Proposer Contract.
- 2) The information detailed in the proposal submitted herewith in response to the subject CN is accurate.
- 3) The proposal submitted herewith in response to the subject CN shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the CN.
- 4) The Proposers shall comply with:
 - a) the laws of the State of Tennessee;
 - b) Title VI of the federal Civil Rights Act of 1964;
 - c) Title IX of the federal Education Amendments Act of 1972;
 - d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
 - e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government;
 - f) the condition that the submitted proposal was independently arrived at, without collusion, under penalty of perjury; and,
 - g) the condition that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the Procurement under this CN.

PRINTED NAME:		DATE:	
SIGNATURE & TITLE:			
	Signature		Title

ATTACHMENT 6.3

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION A			
PROPOSER NAME:			
CN COORDINATOR NAME:		DATE:	
CN COORDINATOR SIGNATURE:			
SECTION A — MANDATORY REQUIREMENTS			
<p>The Proposer must address ALL Mandatory Requirements section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). The CN Coordinator will review all general mandatory requirements, including but not limited to the following:</p> <ul style="list-style-type: none"> ▪ Proposal received on or before the Proposal Deadline. ▪ Technical Proposal copies and Cost Proposal packaged separately. ▪ Technical Proposal contains NO cost data. ▪ Proposer did NOT submit alternate proposals. ▪ Proposer did NOT submit multiple proposals in a different form. ▪ Technical Proposal does NOT contain any restrictions of the rights of the State or other qualification of the proposal. <p>The CN Coordinator will also review the proposal to determine if the Mandatory Requirement Items (below) are met and mark each with pass or fail. For each requirement that is not met, the Proposal Evaluation Team must review the proposal and attach a written determination.</p> <p>NOTICE: In addition to these requirements, the State will also evaluate compliance with ALL CN requirements.</p>			

Proposal Page # (to be completed by Proposer)	Mandatory Requirement Items	State Use ONLY
		Pass/Fail
	<p>A.1 Provide the Proposal Transmittal and Statement of Certifications and Assurances (detailed in CN Attachment 6.2) completed and signed, in the space provided, by an individual empowered to bind the Proposer to the provisions of this CN and any resulting contract.</p> <p><i>Each Proposer <u>must</u> sign the Proposal Transmittal and Statement of Certifications and Assurances without exception or qualification.</i></p>	

Proposal Page # (to be completed by Proposer)	Mandatory Requirement Items	State Use ONLY
		Pass/Fail
	<p>A.2 Provide the following as documentation of financial responsibility and stability.</p> <ul style="list-style-type: none"> ▪ a Dunn & Bradstreet report, dated within the last 6 months, showing the company's current D&B rating ▪ a letter of commitment stating that if the Contractor receives an award pursuant to this procurement, the contractor will provide a copy of a valid certificate of insurance indicating liability insurance in the amount of at least One Million Dollars (\$1,000,000) 	
	<p>A.3 Provide a statement of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.</p> <p><i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.</i></p>	
	<p>A.4 Provide a statement confirming the Proposer has:</p> <p>a) at least three (3) Recovery Centers of adequate size to provide the computer configurations or equivalent equipment specified in Attachments A through E</p> <p>AND</p> <p>b) at least two (2) of the Recovery Centers are more that fifty (50) miles apart.</p>	

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION B			
PROPOSER NAME:			
EVALUATOR NAME:			DATE:
EVALUATOR SIGNATURE:			
SECTION B — QUALIFICATIONS & EXPERIENCE			
<p>The Proposer must address ALL Qualifications and Experience section items and provide, in sequence, the information and documentation as required (referenced with the associated item references).</p> <p>A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the proposal's "qualifications and experience" responses.</p>			
Proposal Page # (to be completed by Proposer)	Qualifications & Experience Items		
	B.1	Describe the Proposer's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and detail the name, mailing address, and telephone number of the person the State should contact regarding the proposal.	
	B.2	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Proposer company within the last ten years, and if so, an explanation providing relevant details.	
	B.3	Provide a statement of whether the Proposer or any of the Proposer's employees, agents, independent contractors, or subcontractors have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony, and if so, an explanation providing relevant details.	
	B.4	Provide a statement of whether there is any pending litigation against the Proposer; and if such litigation exists, an attached opinion of counsel as to whether the pending litigation will impair the Proposer's performance in a contract under this CN.	
	B.5	Provide a statement of whether, in the last ten years, the Proposer has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details.	
	B.6	Provide a statement of whether there are any pending Securities Exchange Commission investigations involving the Proposer, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) will impair the Proposer's performance in a contract under this CN.	
	B.7	Provide a brief, descriptive statement indicating the Proposer's credentials to deliver the services sought under this CN.	
	B.8	Briefly describe how long the Proposer has been performing the services required by this CN and include the number of years in business.	
	B.9	Describe the Proposer organization's number of employees, client base, and	

	location of offices.
	B.10 Provide a narrative description of the proposed project team, its members, and organizational structure.
	B.11 Provide a personnel roster and resumes of key people who shall be assigned by the Proposer to perform duties or services under the contract (include estimated number of hours to be worked on the contract for each person, and the resumes shall detail each individual's title, education, current position with the Proposer, and employment history) as well as an organizational chart highlighting the key people who shall be assigned to accomplish the work required by this CN and illustrating the lines of authority and designate the individual responsible for the completion of each service component and deliverable of the CN.
	B.12 Provide a statement of whether the Proposer intends to use subcontractors, and if so, the names and mailing addresses of the committed subcontractors and a description of the scope and portions of the work the subcontractors will perform.
	<p>B.13 Provide documentation of Proposer commitment to diversity as represented by its business strategy, business relationships, and workforce — this documentation should detail:</p> <ul style="list-style-type: none"> ▪ a description of the Proposer's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, persons with a disability and small business enterprises ▪ a listing of the Proposer's current contracts with business enterprises owned by minorities, women, persons with a disability and small business enterprises, including the following information <ul style="list-style-type: none"> ○ contract description and total value ○ contractor name and ownership characteristics (<i>i.e.</i>, ethnicity, sex, disability) ○ contractor contact and telephone number ▪ an estimate of the level of participation by business enterprises owned by minorities, women, persons with a disability and small business enterprises in a contract awarded to the Proposer pursuant to this CN, including the following information: <ul style="list-style-type: none"> ○ participation estimate (expressed as a percent of the total contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics) ○ descriptions of anticipated contracts ○ names and ownership characteristics (<i>i.e.</i>, ethnicity, sex, disability) of anticipated subcontractors and supply contractors anticipated ▪ the percent of the Proposer's total current employees by ethnicity, sex, and disability <p><i>Proposers that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and sub-contractors. Proposal evaluations will recognize the positive qualifications and experience of a Proposer that does business with enterprises owned by minorities, women, persons with a disability and small business enterprises and that offers a diverse workforce to meet service needs.</i></p>

- B.14** The Proposer may use the sealed reference check questionnaires provided in response to RFP 317.03-150-07 as the entire response to this section **OR** submit sealed reference check questionnaires with the Proposal as the entire response to this section.
- The Proposer **cannot** use a combination of questionnaires provided in response to RFP 317.03-150-07 and questionnaires submitted with this Proposal to meet the requirements of the section.
- If sealed reference check questionnaires **are not** provided with the Proposal, the State will use the questionnaires provided in response to RFP 317.03-150-07 as the entire response to this section.
- If sealed reference check questionnaires **are** provided with the Proposal, the State will use the questionnaires provided as the entire response to this section.
- In either case, all questionnaires are subject to the following provisions:
- Provide customer references for similar projects representing three currently serviced accounts of equivalent or greater size in equipment and complexity. If the Proposer has fewer than three current accounts, provide customer references for previously completed projects to bring the total to three references provided.
- The references shall be provided to the State in the form of questionnaires that have been fully completed by the individual providing the reference. The State has included the reference check questionnaire to be used, as CN Attachment 6.6.
- THE PROPOSER MUST USE THIS FORM, OR AN EXACT DUPLICATE THEREOF.**
- The Proposer will be solely responsible for obtaining the fully completed reference check questionnaires, and for including them within the Proposer's sealed Technical Proposal. In order to obtain and submit the completed reference check questionnaire, the Proposer shall follow the process detailed below exactly:
1. Proposer makes an exact duplicate of the State's form, as it appears in CN Attachment 6.6;
 2. Proposer sends the copy of the form to the reference it has chosen, along with a new, standard #10 envelope;
 3. Proposer directs the person providing the reference check feedback to complete the form in its entirety, sign and date it, and seal it within the provided envelope. The person may prepare a manual document or complete the exact duplicate Word document and print the completed copy for submission. After sealing the envelope, the person providing the reference must sign his or her name in ink across the sealed portion of the envelope and return it directly to the Proposer. The Proposer will give the reference check provider a deadline, such that the Proposer will be able to collect all references in time to include them within its sealed Technical Proposal.
 4. When the Proposer receives the sealed envelopes from the reference check providers, the Proposer **will not open** them. Instead, the Proposer will enclose all of the unopened reference check envelopes, in an easily identifiable larger envelope, and will include this envelope as a part of the written Technical Proposal. Therefore, when the State opens the Technical Proposal box, the State will find a clearly labeled envelope enclosed, which contains all of the sealed reference check envelopes.
 5. The State will base its reference check evaluation on the contents of these envelopes. **THE STATE WILL NOT ACCEPT LATE REFERENCES OR**

	<p><u>REFERENCES SUBMITTED THROUGH ANY OTHER CHANNEL OF SUBMISSION OR MEDIUM, WHETHER WRITTEN, ELECTRONIC, VERBAL, OR OTHERWISE.</u></p> <p>Each reference must include:</p> <ul style="list-style-type: none"> • the Proposer's name; • the Reference's Organization name; • the Name of the person responding; • the Title of person responding; and • the Date the reference form was completed. <p><i>Each evaluator will generally consider the results of reference inquiries by the State regarding <u>all</u> references provided.</i></p>
<p align="center"><i>(Maximum Section B Score = 30)</i></p>	
<p align="center">SCORE (for <u>all</u> Section B items above, B.1 through B.14):</p>	

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION C				
PROPOSER NAME:				
EVALUATOR NAME:		DATE:		
EVALUATOR SIGNATURE:				
SECTION C — TECHNICAL APPROACH				
<p>The Proposer must address ALL Technical Approach section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the proposal's response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:</p> <p style="text-align: center;"><i>0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent</i></p> <p>The CN Coordinator will multiply each item score by the assigned weight with the product being the item's raw weighted score for purposes of calculating the section score as detailed at the end of this table.</p>				
Proposal Page # (to be completed by Proposer)	Technical Approach Items	State Use ONLY		
		Score	Item Weight	Raw Weighted Score
	C.1 Provide a narrative that illustrates the Proposer's understanding of the State's Disaster Recovery requirements.		15	
	C.2 Provide a detailed description of how the Proposer will provide each item in the scope of services. (Section A.1 – A.16.4) Each Section (A.1 – A.16.4) should be copied into the proposal and the Proposer's response provided after each corresponding section.		30	
	C.3 Provide a detailed description of how the Proposer will support the equipment and services in Attachments A, B, C, D, and E.		25	
	C.4 Describe the Proposer's Recovery Centers in detail, including the following information: a) the number of Recovery Centers b) where the Recovery Centers are located c) which Recovery Centers can independently support all equipment and services listed in Attachments A, B, C, D, and E. d) how the Recovery Centers are networked together e) how much capacity each Recovery Center		25	

	<p>currently has in relation to the number of active customers in terms of both testing and a true Disaster event</p> <p>f) each Recovery Center's fire detection and suppression capabilities</p> <p>g) each Recovery Center's uninterruptible power supply</p>			
	<p>C.5 Describe the following strategies in regard to the Proposer's Data Restoration Services:</p> <p>a) the Proposer's strategy, including change control methods, employed during the transition of operations and data to the Recovery Center during Disaster testing or a Disaster event.</p> <p>b) the Proposer's strategy, including change control methods, employed during the transition of operations and data back to State equipment (State Data Center or Cold Site) following Disaster testing or a Disaster event.</p>		5	
<p>Total Raw Weighted Score: (sum of Raw Weighted Scores above)</p>				
<p>Total Raw Weighted Score</p> <hr/> <p>maximum possible raw weighted score (i.e., 5 x the sum of item weights above)</p>				
<p>X 40 (maximum section score)</p>				
<p>= SCORE:</p>				

ATTACHMENT 6.4

COST PROPOSAL & SCORING GUIDE

NOTICE TO PROPOSER: This Cost Proposal **MUST** be completed **EXACTLY** as required.

PROPOSER NAME:	
SIGNATURE & DATE:	

*NOTE: The signatory must be an individual or a company officer empowered to contractually bind the Proposer. If the Signatory is not the Proposer company **chief executive, president, vice-president, or partner** this Cost Proposal **SHALL** attach evidence showing the Signatory's authority to bind the Proposer.*

COST PROPOSAL SCHEDULE

The proposed cost, detailed below, shall indicate the proposed price for providing the entire scope of service including all services as defined in the CN Attachment 6.8, Proposer Contract Scope of Services for the total contract period. The proposed cost and the submitted technical proposal associated with this cost shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the State. All monetary amounts are United States currency.

The following tables are a detailed matrix with spaces for recording the cost amounts proposed. Proposers must enter rates in all four tables per year per environment. The first table is the "Subscription Fee Per Month". The remaining three tables are for the "Optional Services", "Disaster Declaration Cost", and "Components Cost", respectively.

In all the Cost Proposal tables below, the Proposer may enter zero (0) in a required Proposed Cost cell; however, the Proposer must not leave any required Proposed Cost cell blank. For evaluation and contractual purposes, the State shall interpret a blank required Proposed Cost cell as zero (0).

Evaluation Quantity per Year is for evaluation purposes only and must not be construed to reflect actual quantities that will be purchased from the Contract.

TABLE ONE: The proposed Subscription Fee Per Month for Years 1 through 5, for each environment, will be multiplied by the Evaluation Quantity per Year and summed to reflect the total cost of the monthly subscription fee over the life of the contract. The total five year cost of each environment will then be added together (Evaluation Cost Amount).

TABLE ONE

<u>Total Subscription Fee Per Month</u> Rates must be quoted per month.	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4	Rate Year 5	Eval Quantity per year	State Use ONLY Total Cost 5 Years
Monthly Services							
Subscription Fee Per Month - Mainframe Environment						12	
Subscription Fee Per Month - TennCare Environment						12	
Subscription Fee Per Month - Enterprise Windows/Linux Environment						12	
Subscription Fee Per Month - Enterprise Unix Environment						12	

Subscription Fee Per Month - Print/Mail Services						12	
Total Subscription Fee Per Month							
<i>The CN Coordinator shall use the evaluation cost amount derived from the proposed cost amounts above and the following formula to calculate the COST PROPOSAL SCORE for the Total Subscription Fee Per Month. This score will be worth up to 25 points of the maximum 30 points awarded for the Cost Proposal. Calculations shall result in numbers rounded to two decimal places.</i>						Evaluation Cost Amount: <i>(sum of all weighted cost amounts above)</i>	
<u>Lowest Subscription Fee Per Month from all Proposals</u> Subscription Fee Per Month Being Evaluated						X 25 <i>(maximum section score)</i>	= SCORE:

In the three remaining Cost Proposal tables, the proposed Optional Services Costs (TABLE TWO), Disaster Declaration Costs (TABLE THREE), and Components Costs (TABLE FOUR) [collectively known as O/D/C Costs] for Years 1 through 5, for each environment, will be multiplied by the Evaluation Quantity per Year and summed to reflect the total cost of the O/D/C Costs over the life of the contract. The total five year cost of each will then be added together (Evaluation Cost Amount).

TABLE TWO

<u>Total Optional Services Cost</u> Rates must be quoted per the identifier indicated in the item description.	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4	Rate Year 5	Eval Quantity per Year	State Use ONLY Total Cost 5 Years
Mainframe Optional Services							
Additional Testing Time Per 4-Hour Block						2	
Tape Handling Services Per Hour Per Staff Member						160	
Data Destructions Per GB of Data on Contracted DASD						8000	
512 Kbps Public Internet Access During Disaster Recovery Activities						2	
Contractor Data Restoration Services Per Month						12	
Total Mainframe Optional Services							
TennCare Equipment Optional Services							
Additional Testing Time Per 4-Hour Block						2	
Tape Handling Services Per Hour Per Staff Member						160	
Data Destructions Per GB of Data on Contracted DASD						8000	
512 Kbps Public Internet Access During Disaster Recovery Activities						2	
Hardware Analysis Tool(s) Usage Per Month						12	
Contractor Data Restoration Services Per Month						12	
Continuous Data Replication (RPO <=						1000	

5 minutes) for SAN Technology Per GB Per Month							
Batch Data Replication (RPO = 10 minutes) for SAN Technology Per GB Per Month						1000	
Batch Data Replication (RPO = 30 minutes) for SAN Technology Per GB Per Month						1000	
Batch Data Replication (RPO = 1 hour) for SAN Technology Per GB Per Month						1000	
Batch Data Replication (RPO = 2 hours) for SAN Technology Per GB Per Month						1000	
Batch Data Replication (RPO = 4 hours) for SAN Technology Per GB Per Month						1000	
Batch Data Replication (RPO = 8 hours) for SAN Technology Per GB Per Month						1000	
Batch Data Replication (RPO = 24 hours) for SAN Technology Per GB Per Month						1000	
Total TennCare Optional Services							
Enterprise Windows/Linux Optional Services							
Additional Testing Time Per 4-Hour Block						2	
Tape Handling Services Per Hour Per Staff Member						80	
Data Destructions Per GB of Data on Contracted DASD						4000	
512 Kbps Public Internet Access During Disaster Recovery Activities						2	
Hardware Analysis Tool(s) Usage Per Month						12	
Contractor Data Restoration Services Per Month						12	
Continuous Data Replication (RPO < = 5 minutes) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 10 minutes) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 30 minutes) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 1 hour) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 2 hours) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 4 hours) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 8 hours) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 24 hours) for SAN Technology Per GB Per Month						500	
Total Enterprise Windows/Linux Optional Services							
Enterprise UNIX Optional Services							

Additional Testing Time Per 4-Hour Block						2	
Tape Handling Services Per Hour Per Staff Member						80	
Data Destructors Per GB of Data on Contracted DASD						4000	
512 Kbps Public Internet Access During Disaster Recovery Activities						2	
Hardware Analysis Tool(s) Usage Per Month						12	
Contractor Data Restoration Services Per Month						12	
Continuous Data Replication (RPO < = 5 minutes) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 10 minutes) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 30 minutes) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 1 hour) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 2 hours) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 4 hours) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 8 hours) for SAN Technology Per GB Per Month						500	
Batch Data Replication (RPO = 24 hours) for SAN Technology Per GB Per Month						500	
Total Enterprise UNIX Optional Services							
Print/Mail Optional Services							
Additional Testing Time Per 4-Hour Block						2	
Print MICR Checks 8 ½" X 11" Per 1000						2	
Print Simplex/Duplex Pages Per Per 1000						2	
Print Continuous Forms Simplex/Duplex Per Per 1000						2	
Fold, Insert, and Prepare to Mail Forms/Letters Per 1000 Envelopes						2	
Label, Package and Prepare to Ship Print Per 1000 Print Items (items include pages, forms, and envelopes)						2	
Total Print/Mail Optional Services							
Total Optional Services Cost							

TABLE THREE

Total Disaster Declaration Cost Rates must be quoted per the identifier indicated in the item description.	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4	Rate Year 5	Eval Quantity per Year	State Use ONLY Total Cost 5 Years
Mainframe Services Disaster Declaration							
Declaration Fee Per Incident						0.2	
Alert Fee Per Incident						0.2	
Recovery Center Usage Per Day						42	
Cold Site Usage Per Day						180	
Total Mainframe Disaster Declaration							
TennCare Services Disaster Declaration							
Declaration Fee Per Incident						0.2	
Alert Fee Per Incident						0.2	
Recovery Center Usage Per Day						42	
Cold Site Usage Per Day						180	
Total TennCare Disaster Declaration							
Enterprise Windows/Linux Services Disaster Declaration							
Declaration Fee Per Incident						0.2	
Alert Fee Per Incident						0.2	
Recovery Center Usage Per Day						42	
Cold Site Usage Per Day						180	
Total Enterprise Windows/Linux Disaster Declaration							
Enterprise UNIX Services Disaster Declaration							
Declaration Fee Per Incident						0.2	
Alert Fee Per Incident						0.2	
Recovery Center Usage per Day						42	
Cold Site Usage Per Day						180	
Total Enterprise UNIX Disaster Declaration							
Print/Mail Services Disaster Declaration							
Print-Only Declaration Fee Per Incident						0.2	
Print-Only Alert Fee Per Incident						0.2	
Print-Only Recovery Center Usage per Day						365	
Total Print/Mail Disaster Declaration							
Total Disaster Declaration Cost							

In Table Four, Standard [server type] Configuration and Additional [server type] Components should be priced for the indicated server type. Standard [server type] Configuration denotes the minimum server configuration required by the State. Refer to Contract Attachment F for Standard [server type] Configuration definitions. Additional [server type] Components denote the components that may be added to the server to upgrade the components beyond the Standard [server type] Configuration.

TABLE FOUR

<u>Total Components Cost</u> Rates must be quoted per month.	Rate Year 1	Rate Year 2	Rate Year 3	Rate Year 4	Rate Year 5	Eval Quantity per Year	State Use ONLY Total Cost 5 Years
Mainframe Components							
50 Gartner MIP						1	
2 GB Main Storage						1	
100 GB DASD Useable formatted space – NOT RAW SPACE						1	
1 Open Systems Adapter (OSA)						1	
1 4000 Mod 1 Printer						1	
1 3490 Tape Drive						1	
1 3590 Tape Drive (Mod E11)						1	
1 3174 Mod 11L Local Terminal Control Unit						1	
1 3194 Mod 5 Operator Console						1	
1 3745-x1A (16MB, 10 CA, 4 high speed scanners, 64 LIC1, 64 LIC3, 5 56Kb ports)						1	
1 3746/900 (2 ESCON, 2 TR TIC3, 4 LIC11 (12 V.24, 3 V.35))						1	
1 19.2 Kb Circuits (Dial-up)						1	
1 3287/002 Printer						1	
1 DRS Circuit/ DS-3 access						1	
1 DRS Circuit/ T1.5 Mb Access Link						1	
Total Mainframe Components Cost							
Enterprise UNIX Components							
Standard SUN V240 Configuration						1	
Additional SUN V240 - 1 1.5GHz Processor						1	
Additional SUN V240 - 1 GB Memory						1	
Additional SUN V240 - 1 GB Local Hard Disk Space						1	
Additional SUN V240 - 1 10/100BaseT						1	
Standard SUN V440 Configuration						1	
Additional SUN V440 - 1 1.593GHz Processor						1	
Additional SUN V440 - 1 GB Memory						1	
Additional SUN V440 - 1 GB Local Hard Disk Space						1	
Standard SunFire V890 Configuration						1	

Additional SunFire V890 - 1 1.5Ghz Processor						1	
Additional SunFire V890 - 1 GB Memory						1	
Additional SunFire V890 - 1 GB Local Hard Disk Space						1	
Additional SunFire V890 - 1 Quad Fast Ethernet Card						1	
Additional SunFire V890 - 1 Gbit 1x100BaseT						1	
Additional SunFire V890 - 1 LP9002L Fiber Adapter						1	
Standard SUN 1280 Configuration						1	
Additional SUN 1280 - 1 1.5GHz Processor						1	
Additional SUN 1280 - 1 GB Memory						1	
Additional SUN 1280 - 1 GB Local Hard Disk Space						1	
Standard SUN T2000 Configuration						1	
Additional SUN T2000 - 1 1GHz Processor						1	
Additional SUN T2000 - 1 GB Memory						1	
Standard SUN 4900 Configuration						1	
Additional SUN 4900 - 1 1.35GHz Dual Core Ultrasparc 4 Processor						1	
Additional SUN 4900 - 1 GB Memory						1	
Additional SUN 4900 - 1 GB Local Hard Disk Space						1	
Additional SUN 4900 - 1 SCSI Adapter						1	
Additional SUN 4900 - 1 Quad Fast Ethernet Card						1	
Additional SUN 4900 - 1 Gbit 1x100BaseT						1	
Additional SUN 4900 - 1 Gbit 1x1000BaseT						1	
Additional SUN 4900 - 1 10/100BaseT						1	
Additional SUN 4900 - 1 LP9002L Fiber Adapter						1	
Additional SUN 4900 - 1 6560 Fiber Adapter						1	
Additional SUN 4900 - 1 L700 Tape Library						1	
Additional SUN 4900 - 1 LTO-2 Tape Drives						1	
Total Enterprise UNIX Components Cost							
Enterprise Windows/Linux Components							
Standard HP DL380 G4 Configuration						1	
Additional HP DL380 G4 - 1 GB Memory						1	
Additional HP DL380 G4 - 1 72 GB Ultra320 SCSI hard drives (RAID 5)						1	

Additional HP DL380 G4 - 1 146 GB Ultra320 SCSI hard drives (RAID 5)						1	
Additional HP DL380 G4 - 1 Dual Port HBA for SAN Connectivity						1	
Standard HP DL580 G3 Configuration						1	
Additional HP DL580 G3 - 1 GB PC2-3200 ECC Memory						1	
Additional HP DL580 G3 - 1 GB Local Hard Disk Space						1	
Additional HP DL580 G3 - 1 146 GB Ultra320 SCSI hard drive						1	
Additional HP DL580 G3 - 1 72GB 15K RPM Local Hard Disks						1	
Additional HP DL580 G3 - 1 Single Port HBA for SAN Connectivity						1	
Additional HP DL580 G3 - 1 Gigabit Network Connection (2 Onboard + 2 dual port NIC Cards)						1	
Standard Dell PowerEdge 2850 Configuration						1	
Additional Dell PowerEdge 2850 - 1 GB Memory						1	
Additional Dell PowerEdge 2850 - 1 72 GB Ultra320 SCSI hard drives (RAID 5)						1	
Additional Dell PowerEdge 2850 - 1 146 GB Ultra320 SCSI hard drives (RAID 5)						1	
Additional Dell PowerEdge 2850 - 1 Dual Port HBA for SAN Connectivity						1	
Standard Dell PowerEdge 6850 Configuration						1	
Additional Dell PowerEdge 6850 - 1 GB PC2-3200 ECC Memory						1	
Additional Dell PowerEdge 6850 - 1 GB Local Hard Disk Space						1	
Additional Dell PowerEdge 6850 - 1 146 GB Ultra320 SCSI hard drive						1	
Additional Dell PowerEdge 6850 - 1 72GB 15K RPM Local Hard Disks						1	
Additional Dell PowerEdge 6850 - 1 Single Port HBA for SAN Connectivity						1	
Additional Dell PowerEdge 6850 - 1 Gigabit Network Connection (2 Onboard + 2 dual port NIC Cards)						1	
Total Enterprise Windows/Linux Components Cost							
UNIX/Windows/Linux SAN Storage							
10 GB Storage on SAN (usable formatted space with RAID 5 configuration - NOT RAW SPACE)						1	
Total UNIX/Windows/Linux SAN Storage Cost							
Print/Mail Components							
MICR Checks 8 ½" X 11" Per 1000						1	
Simplex/Duplex Pages Per 1000						1	

Continuous Forms Simplex/Duplex Per Per 1000							1	
Total Print/Mail Components Cost								
Total Components Cost								

Total Optional Services / Disaster Declaration / Components Cost (O/D/C)						
<p><i>The CN Coordinator shall use the evaluation cost amount derived from the proposed cost amounts above and the following formula to calculate the COST PROPOSAL SCORE for the O/D/C Costs. This score will be worth up to 5 points of the maximum 30 points awarded for the Cost Proposal. Calculations shall result in numbers rounded to two decimal places.</i></p>						
<p>Evaluation Cost Amount: (sum of all weighted cost amounts above)</p>						
<p><u>Lowest O/D/C Cost from all Proposals</u> O/D/C Cost Being Evaluated</p>						
<p>x 5 (FIVE) (maximum section score)</p>						
<p>= SCORE:</p>						

The total Subscription Fee cost points (calculated in Table One) will be added to the total Optional/Disaster/Components Cost (calculated from Tables Two, Three, and Four) to establish the total cost points for the Proposer, for evaluation purposes.

Subscription Fee Cost Score (maximum section score = 25)	
Optional/Disaster/Component Cost Score (maximum section score = 5)	
TOTAL SCORE (Total maximum section score = 30)	

ATTACHMENT 6.5

PROPOSAL SCORE SUMMARY MATRIX

CN Coordinator			Date			
QUALIFICATIONS & EXPERIENCE Maximum Points: 30	PROPOSER NAME		PROPOSER NAME		PROPOSER NAME	
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	AVERAGE SCORE:		AVERAGE SCORE:		AVERAGE SCORE:	
TECHNICAL APPROACH Maximum Points: 40						
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	AVERAGE SCORE:		AVERAGE SCORE:		AVERAGE SCORE:	
COST PROPOSAL Maximum Points: 30	SCORE:		SCORE:		SCORE:	
PROPOSAL SCORE Maximum Points: 100	TOTAL SCORE:		TOTAL SCORE:		TOTAL SCORE:	

ATTACHMENT 6.6

STATE OF TENNESSEE
DISASTER RECOVERY SERVICES
RFS #317.03-162-07
REFERENCE INFORMATION QUESTIONNAIRE

Proposer's Name: _____

Reference (Client Organization) Name:

Person Responding To This
Request for Reference Information:

Printed Name

Signature **(MUST BE THE SAME AS THE SIGNATURE
ACROSS THE ENVELOPE SEAL)**

Person's Title: _____

Date Reference Form Was Completed: _____

NOTE: Reference should complete responses to the seven (7) items that appear on the following pages. If completed using a Word document, use as much space as required. If completed manually, record response in space provided.

1. Describe the services provided by the vendor to your organization.
2. Please rate your overall satisfaction with the vendor on a scale of 1 to 5, with 1 being "least satisfied" and 5 being "most satisfied."
3. If you answered 3 or less to the previous question, what could the vendor have done to improve their rating?
4. Please indicate your level of satisfaction with the Proposer personnel that you worked with to fill your contract needs? Use a scale of 1 to 5; with 1 being "least satisfied," and 5 being "most satisfied."
5. If you answered 3 or less to the previous question, what could the vendor have done to improve their rating?
6. As far as you know, has the vendor remained (or did the vendor remain) in compliance with the contract throughout their provision of services to your organization? If not, please explain.
7. Would you use the services of the vendor again? Indicate on a scale of 1 to 5: with 1 being "absolutely not" and 5 being "absolutely yes". Please explain.

ATTACHMENT 6.7

Contract Language Restrictions and Non-Negotiable Contractual Language

1. Limitation of Liability This includes language relating to hold harmless, indemnification, and disclaimer of warranty clauses. We recognize that Proposers have an interest in limiting liability that may arise under the contract. Historically, the State of Tennessee was not allowed to accept any limitations of liability or warranty since this was considered surrendering the rights of the citizens of the State. The Tennessee General Assembly granted some relief from this doctrine in 2000 with the passage of Tennessee Code Annotated section 12-4-119, which allows the State to accept certain limitations of liability.

However, this statute does not allow the State to limit the liability of a contractor below twice the value of the contract, or to limit liability for intentional torts, criminal acts, or fraudulent conduct. Any limitation or disclaimer that the State agrees to, including a limitation of liability for consequential damages, must fit within this statutory framework.

2. Confidentiality We recognize that Proposers consider it important to restrict distribution of proprietary information. The State of Tennessee, like most government entities, is subject to an open records statute. The Tennessee statute, T.C.A. 10-7-504, has been interpreted by the courts to require that all State records be open unless there is an express exemption in a statute, and the State cannot avoid this obligation by contract.

The General Assembly has granted an exemption that provides some protection to procurements of this type. Specifically, Section 10-7-504(a)(18) provides:

Computer programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, or higher education institutions shall not be open to public inspection, provided that computer programs, software, software manuals, and other types of information produced by state or higher education employees at state expense shall be available for inspection as part of an audit or legislative review process.

However, this language may be inconsistent with confidentiality language in some Proposers' form contracts.

3. Remedies Many Proposers ask their customers to agree to certain forms of relief for breaches of contract which the State cannot agree to. Tennessee Constitution Article I, Section 17, provides that the State can only surrender its sovereign immunity in circumstances permitted by the Tennessee General Assembly. In the case of State contracts, the State has consented to be sued in the Tennessee Claims Commission under T.C.A. 9-8-307 et seq. The Claims Commission can award money damages against the State and provides for appeal to the Tennessee court system. However, the State cannot agree to many forms of remedy which Proposers often request, such as injunctive relief, binding arbitration or mediation, jurisdiction in any court outside Tennessee, or the payment of court costs and attorney fees.

4. Restrictions on Use of Work Product Many information technology contractors request that the State place limitations on its use of products supplied or developed under the contract. Such arrangements are scrutinized carefully by State government regulators due to concerns that the State is placing unwarranted burdens on its right to use its own property. Another concern is that a set of complicated restrictions on use will be burdensome to enforce for a product that will be used for many purposes over many years by a large government organization. The language on use of work products in the State pro forma contract has been developed based on considerable experience in dealing with information technology contractors. We are open to suggestions on amendments to this language but any negotiations must take the State's concerns into account.

5. Records The Records clause is specifically required by Departmental regulations. This is mandatory due to the strong public interest in monitoring government spending and preventing improper use of public funds.

PROPOSER CONTRACT

This is a placeholder for the agreed-to Proposer Contract, which will be inserted after contract negotiation and prior to proposal submission.